

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 13-10200-GAO
	)	
DZHOKHAR A. TSARNAEV, also	)	
known as Jahar Tsarni,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

**JURY TRIAL - DAY SEVENTEEN**

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thursday, February 12, 2015  
11:15 a.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
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Mechanical Steno - Computer-Aided Transcript

## 1 APPEARANCES:

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20  
21  
22  
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P R O C E E D I N G S

THE CLERK: All rise.

(The venire enters the courtroom at 11:15 a.m.)

THE CLERK: All rise for the Honorable Court.

(The Court enters the courtroom at 11:16 a.m.)

THE CLERK: Be seated.

THE COURT: Good morning.

THE JURORS: Good morning.

THE COURT: As you know, we are continuing the process of selecting a jury for the trial of the case of United States versus Dzhokhar Tsarnaev. Mr. Tsarnaev is charged in connection with a bombing that occurred near the finish line of the Boston Marathon on April 15th, 2013, and that resulted in the deaths of three people. He's also charged in the death of an MIT police officer and other crimes occurring on April 18 and 19, 2013.

Some, but not all, of the crimes charged are, by statute, potentially punishable by death. You'll recall from my prior instructions that the trial jury will first consider and decide whether the government has proved Mr. Tsarnaev's guilt of any or all of the charges against him. If he is convicted of any of the capital crimes -- that is, crimes potentially punishable by death -- the jury will then consider and decide whether he will be sentenced to death for any such crime or to life in prison without the possibility of release.

1           You may wonder why the death penalty could be a  
2           possibility in this case in view of the fact that the laws of  
3           Massachusetts do not provide the death penalty for murder or  
4           any other violation of Massachusetts law. The reason is that  
5           this is a federal case involving alleged violations of the laws  
6           of the United States rather than a state case involving  
7           violations of Massachusetts law.

8           If the jury convicts Mr. Tsarnaev of any one of the  
9           capital crimes charged in the indictment, then the same jury  
10          will hear additional evidence and decide whether to sentence  
11          him to death or to life in prison without the possibility of  
12          release. Because the jury that is selected to decide the  
13          defendant's guilt or innocence will also decide his punishment  
14          if he is convicted, it is necessary to question prospective  
15          jurors about their feelings and beliefs about the death penalty  
16          as part of the process of selecting a jury.

17          Let me explain briefly the procedures that must be  
18          followed in a case in which the death penalty is or may be at  
19          issue. As in any criminal trial, initially the government will  
20          have the burden of proving that Mr. Tsarnaev is, in fact,  
21          guilty of any crime with which he is charged. If he is  
22          convicted by the jury of a crime for which the death penalty  
23          may lawfully be imposed, there will be a second phase of the  
24          trial, usually referred to in shorthand as the penalty phase.

25          In that phase, the government will introduce evidence

1 that seeks to establish and prove beyond a reasonable doubt,  
2 first, that the defendant acted with sufficient intent to be  
3 subject to the death penalty under the law; and, second, that  
4 aggravating factors about the killings or about the defendant  
5 justify sentencing him to death.

6 Aggravating factors are circumstances that, if proven,  
7 make the crimes particularly serious or blameworthy and,  
8 therefore, under the law may justify imposing a more severe  
9 sentence on Mr. Tsarnaev compared to other persons who have  
10 been convicted of intentional killing or murder. The  
11 government will bear the burden of proving any alleged  
12 aggravating factors to every juror beyond a reasonable doubt.

13 The defense will have the opportunity in the penalty  
14 phase to present evidence of what it will argue are mitigating  
15 factors. Mitigating factors are usually circumstances about  
16 the crime or crimes or about the defendant's background or  
17 character that would suggest that the death penalty is not the  
18 appropriate sentence in the case or that life in prison without  
19 the possibility of release is adequate to punish the defendant.  
20 Unlike the proof of aggravating factors, a mitigating factor  
21 must only be proven by the greater weight of the evidence.  
22 That is a less demanding standard of proof than proof beyond a  
23 reasonable doubt.

24 Again, unlike the proof of aggravating factors,  
25 mitigating factors do not have to be proven to the satisfaction

1 of all 12 jurors. Any juror who finds or determines that a  
2 mitigating factor has been proven by a greater weight of the  
3 evidence may consider that factor in deciding the appropriate  
4 sentence in the case, regardless of whether any or all of the  
5 other jurors agree that that mitigating factor has been proven.

6 After the parties have made their presentations during  
7 the penalty phase, the jury will then weigh all the evidence.  
8 Before a jury could vote to impose the death penalty, every  
9 juror would have to be persuaded that certain threshold factors  
10 that make the defendant potentially subject to the death  
11 penalty had been proven beyond a reasonable doubt.

12 In addition, in order to impose the death penalty,  
13 every juror would have to be persuaded that any proven  
14 aggravating factors sufficiently outweigh any mitigating  
15 factors found by any juror or jurors to justify a sentence of  
16 death. Even if the jury did not find any mitigating factors,  
17 it would still have to be unanimously persuaded that any proven  
18 aggravating factors were themselves sufficient to justify a  
19 death sentence.

20 You should understand that a jury is never required to  
21 find that a sentence of death is justified. The decision  
22 whether the government has proven that a defendant should be  
23 sentenced to death must ultimately be made by each juror  
24 himself or herself. If, however, every juror is persuaded that  
25 the death penalty should be imposed, I would be required as the

1 trial judge to sentence the defendant to death; in other words,  
2 I could not change the jury's decision. The jury, and not the  
3 judge, is responsible for determining whether a defendant who  
4 is convicted of a capital crime will live or die.

5 What I've just described is an overview of the law  
6 applicable to the jury's consideration of the death penalty.  
7 If you are selected to serve on this jury and if you find the  
8 defendant guilty of a crime or crimes punishable by death, I  
9 will then give you very detailed instructions concerning your  
10 duties in deciding whether to impose the death penalty or life  
11 imprisonment without the possibility of release and the law  
12 that must be followed in making that decision.

13 When you filled out your questionnaires, we told you  
14 that there are no right or wrong answers to any of the  
15 questions you've been asked or that you will be asked in this  
16 further process. We're asking these questions because both the  
17 government and Mr. Tsarnaev are entitled to have a jury that  
18 does not have its mind firmly made up one way or another before  
19 hearing the evidence and a detailed explanation of the law.  
20 That applies both to whether Mr. Tsarnaev is guilty or not  
21 guilty of the specific crimes charged in the indictment and, if  
22 he's convicted of a capital crime, whether he should be  
23 sentenced to death or to life in prison without the possibility  
24 of release.

25 So we're going to continue the process today by

1 questioning you each individually about issues that are  
2 relevant to selecting a jury. In just a moment we're going to  
3 ask you to go back into the room where you were just a few  
4 moments ago. We'll call you into the courtroom one by one to  
5 ask you some questions.

6           There will be a few people in the courtroom in  
7 addition to the lawyers and their staffs, and these proceedings  
8 are being simultaneously transmitted by video and audio to  
9 overflow courtrooms. We will not identify you by name but  
10 rather by juror number. And you will be seated so that the  
11 video camera transmitted to other courtrooms will be behind  
12 you.

13           Your answers will be generally public, but if you  
14 believe that a truthful answer would require you to reveal  
15 sensitive personal information, we will temporarily stop the  
16 audio transmission to those courtrooms so that people observing  
17 there will not be able to hear your answer.

18           Again, we do not expect or want any particular answer  
19 to any of the questions. All we want, and what the law  
20 expects, is that you provide accurate and truthful answers to  
21 the questions you're asked. If you do that, you will be doing  
22 your duty as a citizen and as a juror, no matter what the  
23 answers may be.

24           I remind you about some of my prior instructions. As  
25 I told you, a jury's verdict must be based on the evidence



1 produced at trial and must be free from outside influence;  
2 therefore, I remind you again it is extremely important that  
3 you do not discuss the case, including the selection process,  
4 with your family, friends, each other, or any other person  
5 until either you have been excused or, if selected as a juror,  
6 until the case concludes. And again, of course, you're not to  
7 conduct any independent research, online or otherwise, about  
8 the case or to read, watch, listen to reports about the case in  
9 the media.

10 When you signed your juror questionnaire, you did so  
11 under a statement that -- affirming that the statements in  
12 the -- your answers in the questionnaire were true. That was  
13 under the pains and penalties of perjury. Again, we'll ask you  
14 to swear or affirm that your answers given today in this voir  
15 dire process will be true, and the clerk will now administer  
16 that oath or affirmation to you.

17 THE CLERK: Will the jurors please rise and raise your  
18 right hand.

19 (The venire is duly sworn.)

20 THE COURT: All right. Thank you, jurors. We'll now  
21 ask you to step out, and we'll have you back one by one to  
22 continue the process.

23 (The venire exits the courtroom at 11:27 a.m.)

24 THE COURT: We're going to do 418 first.

25 THE CLERK: Juror No. 418.

1 THE JURY CLERK: Juror 418.

2 (The juror enters the courtroom.)

3 THE CLERK: Sir, over here, please. Have a seat. And  
4 do me a favor, keep your voice up and speak into the mic so  
5 everyone at the table can hear you. Okay?

6 THE JUROR: Okay.

7 THE COURT: Good morning.

8 THE JUROR: Good morning.

9 THE COURT: Since you were last here, have you been  
10 able to follow the instructions to avoid discussing the  
11 substance of the case with anyone?

12 THE JUROR: The best I could.

13 THE COURT: How was that?

14 THE JUROR: Well, for example, in the dental chair,  
15 they have flat-screen TVs, and I'm sitting there with things in  
16 my mouth, and all of a sudden there's news about the case.

17 THE COURT: All right. Okay.

18 So that's the questionnaire, and we're going to follow  
19 up on some of the answers you gave. I guess we'll start with  
20 the Question 10 where you had a fairly lengthy response. We  
21 would like you to tell us what you think would be the  
22 difficulty for you.

23 THE JUROR: Well, first of all, I understand the  
24 importance of doing my civic duty, and I believe my situation  
25 is -- goes beyond an inconvenience for me. The company that I

1 work for, it's a small company. There's no one above me,  
2 there's no one below me that I can turn over my  
3 responsibilities to. So my being out of that office for four  
4 months would have a devastating effect to the business.

5 THE COURT: Give us some sense of size --

6 THE JUROR: An example?

7 THE COURT: No, give me an idea of the size of the  
8 business. How many employees, for example?

9 THE JUROR: Well, as of right now, there's 120. We're  
10 a federal government contractor, Department of Defense, and  
11 you're probably familiar with sequestration. We just heard  
12 yesterday we're having some major cuts to some of our programs,  
13 so I'm a key individual to figure out where we need to make our  
14 cuts in our overhead and G&A and things like that.

15 Also, because of the type of industry we're in, we  
16 have to answer to the DCAA, the Defense Contract Audit Agency.  
17 And I'm right now in the middle of giving them information for  
18 2009, '10, '11, '12, and '13, and if I don't respond in a  
19 timely manner, they have the ability to shut us down and we  
20 can't even invoice the government for the work that we're  
21 doing. I can continue on and on of all the different things.

22 THE COURT: Yeah. One of the reasons we structure the  
23 schedule the way we do, to concentrate on the four days rather  
24 than five days a week, is to let people have some opportunity,  
25 particularly in business settings, to be back in the office on

1       Fridays. Obviously it's a different way of addressing the  
2       duties, but you have Fridays, you have weekends, you have  
3       evenings, which mitigates to some extent.

4               So let me -- you also -- you checked on the Question  
5       26 that you supervise people. We asked if you checked whether  
6       you supervise people. Can you tell me who and how many and so  
7       on you supervise?

8               THE JUROR: Well, in our company, we're spread out  
9       around the country, but in this office that I'm in, it's  
10      considered to be our headquarters, and we have a contracts  
11      director, we have a security officer which is a person who  
12      handles all the security clearances for our contracts, we have  
13      our human resource manager, and then we have an accountant  
14      assistant and an IT manager. I believe that's everybody in  
15      Sudbury.

16              THE COURT: I gather you would not be financially  
17      affected if you served on the jury. In other words, you would  
18      continue to get paid, I assume?

19              THE JUROR: I haven't addressed that. I believe so.  
20      I would think so.

21              THE COURT: I would think at your position in the  
22      company, in any case.

23              THE JUROR: Yeah, I would think so.

24              THE COURT: Okay. Let's go through some of the other  
25      things we wanted to follow up on. We have been asking people

1 about their use of social media. You say you use Facebook  
2 daily. Check in daily, I think is what you said.

3 THE JUROR: I check in daily, but I don't -- I don't  
4 post anything. It's basically to check in -- my daughters,  
5 that's where I see the pictures and things like that. I  
6 don't -- it's not a form of communication with my friends or  
7 anything like that.

8 THE COURT: You have had occasion to serve on a  
9 criminal jury once before, you said about 15 years ago in the  
10 state?

11 THE JUROR: Correct.

12 THE COURT: Do you remember what court it was in?

13 THE JUROR: It was in Dedham. The Dedham District  
14 Court.

15 THE COURT: Was it a six-person jury or 12-person? Do  
16 you remember?

17 THE JUROR: I believe it was 12.

18 THE COURT: Okay.

19 So would you take a look at page 20, please? Question  
20 77 near the top, it's a multiple-part question. We asked  
21 whether, based on things you'd seen or heard in the media or  
22 otherwise, you had formed different opinions; first, formed an  
23 opinion that the defendant is guilty or that he's not guilty or  
24 that he should receive the death penalty or not receive the  
25 death penalty, and you checked a box in answer to each of those

1 answers.

2 With respect to the first, you checked "yes," that you  
3 had formed an opinion that he's guilty; "no," that he -- you'd  
4 not formed an opinion he was not guilty; and then "no," you had  
5 formed an opinion that he should not -- you had not formed an  
6 opinion that he should receive the death penalty; you had  
7 formed an opinion that he should not receive the death penalty,  
8 right?

9 THE JUROR: Clearly I'm confused.

10 THE COURT: Let's break it apart. Let's talk about A  
11 and B. I think your answers are -- one is the reverse of the  
12 other, and they're consistent. So in A you said you'd formed  
13 an opinion that the defendant is guilty.

14 THE JUROR: Yes.

15 THE COURT: Right?

16 And in B you said you had not formed an opinion that  
17 he was not guilty. That's because of A, I take it.

18 THE JUROR: Right. I checked the wrong box,  
19 apparently.

20 THE COURT: I'm not sure. I think -- but let me just  
21 ask, if you look below, later in the question it says, if you  
22 answered "yes" to any of these questions, would you be able or  
23 unable to set aside your opinion and base your opinion -- your  
24 decision about guilt solely on the evidence presented to you in  
25 court, and you said "able."

1           So would you tell us what you were thinking when you  
2       made that choice?

3           THE JUROR: Well, since January 5th, I've been  
4       thinking a lot about this without reading anything, just my own  
5       personal thoughts, and I'm thinking back at the time when it  
6       all transpired and where I was and everything. And I'm not  
7       sure I'm able to change my mind.

8           My wife is -- was a marathon runner, not this  
9       year -- I mean, not that year but in the past. We're avid --  
10      we always attend. We were probably just lucky we weren't there  
11      because in all the previous years when we were there, we would  
12      stay right at the finish line. So we were just lucky, for  
13      whatever reason, we weren't there that year. We were involved  
14      in the town lockdowns. My niece was a mile away from the  
15      Watertown incident with the boat and everything.

16           So I just remember all those different things, and his  
17      pictures are there in the media. They have the video showing  
18      him dropping off the backpack at the site, the MIT murder and  
19      running over his brother. I mean, why was he fleeing? I mean,  
20      I -- it's going to be difficult.

21           THE COURT: Right. The question isn't really getting  
22      at whether you have seen reports about the case and therefore  
23      have some ideas about what you might be asked. It's more about  
24      whether, in serving as a juror, you could focus on the task,  
25      which is to pay attention to the evidence introduced in the

1 case and make a decision based on the evidence.

2 And you've had experience as a criminal juror, so I'm  
3 sure you understand that, in our process, a person who's  
4 accused of a crime is presumed innocent unless the government  
5 proves that the person's guilty by the evidence produced at  
6 trial and proves that beyond a reasonable doubt. So what we  
7 ask jurors to do is to set aside ideas they may have, focus on  
8 the evidence that is in the case, and make a decision based on  
9 that.

10 And do you think you'd be able to do that or not?

11 THE JUROR: It's hard to say either way. It's hard to  
12 know.

13 THE COURT: Okay.

14 THE JUROR: If the evidence was compelling, perhaps I  
15 would be able to change my mind.

16 THE COURT: You understand that in a criminal case,  
17 the burden of proof is always with the government. The  
18 defendant doesn't have an obligation to prove he's not guilty.

19 THE JUROR: I understand.

20 THE COURT: The default position is not guilty --

21 THE JUROR: Right.

22 THE COURT: -- unless the government persuades you  
23 otherwise, right?

24 And the question is whether -- again, whether the  
25 jurors can insist that the government satisfied them that it



1 has the evidence to convict the person or that, if it doesn't,  
2 they would be bound to find the person not guilty.

3 You don't think you're able to do that?

4 THE JUROR: I don't know, honestly.

5 THE COURT: Okay. We did also ask some  
6 question -- and the latter part of the Question 77 is about the  
7 death penalty, but let's turn to page 23 where we ask a series  
8 of questions more specifically about it.

9 Beginning with Question 88, we ask if you have any  
10 views about the death penalty in general, what are they, and  
11 you said, "I'm against the death penalty. I believe the  
12 punishment is greater by having to live with it. No  
13 possibility of release."

14 Could you maybe amplify on that, what your views about  
15 the death penalty in general are? If you have ideas beyond  
16 what you expressed. And I know that people were asked this  
17 sort of, perhaps, without warning.

18 THE JUROR: Right. I've been wrestling with it since  
19 the 5th. I have not come to a conclusion. I just don't know.

20 THE COURT: Okay. In the next question, we tried to  
21 get at it by asking you to put yourself on a scale from 1 to  
22 10, where 1 was strongly opposed and it reflects a belief that  
23 the death penalty should never be imposed, and 10 was strongly  
24 favor and reflects a belief that the death penalty should be  
25 imposed whenever a defendant has been convicted of an

1 intentional murder. You placed yourself at 3, which is perhaps  
2 moderately opposed. Is that --

3 THE JUROR: I would think moderately would be 5.

4 THE COURT: All right. A little more than moderately  
5 opposed?

6 THE JUROR: Yeah, I...

7 THE COURT: Well, let's go to the next question  
8 because we came at it a different way in the next question by  
9 asking you to see if there's a statement that you could agree  
10 with as representing your view, and you selected C --

11 THE JUROR: Yeah.

12 THE COURT: -- "I'm opposed to the death penalty but I  
13 could vote to impose it if I believed that the facts and the  
14 law in a particular case called for it." That's what you chose  
15 then.

16 Do you think that still represents your view? And if  
17 you want, take the time to review all of the possibilities.

18 (Pause.)

19 THE JUROR: It's funny how things -- at the time,  
20 obviously, on the 5th I felt C was appropriate, but after  
21 wrestling with it since early January, I think I would change  
22 that to B, as in "Bob."

23 THE COURT: Which is that you're opposed and would  
24 have a difficult time voting to impose it, even if the facts  
25 supported it. Is that --

1 THE JUROR: I think so.

2 THE COURT: Let's go to the next page, the bottom,  
3 Question 95. We asked, now in reference to this particular  
4 case, if you found this defendant guilty and you decided that  
5 the death penalty was the appropriate punishment for him, could  
6 you conscientiously vote for the death penalty, and you said  
7 "not sure."

8 And while you're thinking about that, let's go to the  
9 related question at the top of the next page, which says, "If  
10 you found the defendant guilty and you decided that life  
11 imprisonment without the possibility of release was the  
12 appropriate punishment for him, could you conscientiously vote  
13 for life imprisonment without the possibility of release?" And  
14 you said, "Yes."

15 THE JUROR: Yes.

16 THE COURT: So you were affirmative on that, but you  
17 were not sure on 95?

18 THE JUROR: Right.

19 THE COURT: Can you tell us a little bit about that?

20 THE JUROR: Well, this relates to the previous  
21 question. I'm just not sure.

22 THE COURT: What is it that makes --

23 THE JUROR: I'm not sure that I could be part of this  
24 group to say death is appropriate.

25 THE COURT: One of the things -- and I think you're

1 appreciating it. One of the things the question is getting at  
2 is you see one of the assumptions in the question is that you  
3 have decided that the death penalty is an appropriate  
4 punishment for him. Having made that decision, can you  
5 conscientiously vote to do it, is one of the things the  
6 question is getting at.

7 THE JUROR: I suppose if you follow all the rules and  
8 everything meets the criteria it should be, I could see why you  
9 could vote for the death penalty. If I understand this  
10 correctly, it's saying once you do that, can you actually  
11 impose it. Is that correct?

12 THE COURT: Right. The question is the difference  
13 between sort of a rational, intellectual decision that the  
14 death penalty is appropriate here, but whether you could  
15 conscientiously follow through and vote to be responsible for  
16 imposing it. I think that's one of the things the question  
17 gets at.

18 THE JUROR: Right. And I am not sure.

19 THE COURT: And can you tell us why?

20 THE JUROR: I feel that it's more appropriate to stay  
21 in jail for life and think about the crimes that they did.

22 THE COURT: Okay. Any follow-up questions?

23 MR. WEINREB: Yes, please. Good morning.

24 THE JUROR: Good morning.

25 MR. WEINREB: My name is Bill Weinreb. I'm one of the

1 prosecutors. I Just want to ask you a few more questions about  
2 the death penalty question -- issue there.

3 So when you say that -- you said if you follow all the  
4 rules, if everything meets the criteria, then the question is  
5 could you impose it. So I want to break that into two  
6 different questions.

7 So the first thing is, you understand that if there  
8 is -- if the defendant is found guilty -- or in any case, not  
9 necessarily this one, but in a case where the death penalty is  
10 a possibility, if the defendant's found guilty, then there's a  
11 second phase of the trial, and that's a phase in which the  
12 government offers evidence suggesting that the death penalty is  
13 the appropriate sentence and the defense can offer evidence  
14 that the death penalty is not an appropriate sentence.

15 And I guess the first question is: Are you so  
16 strongly opposed to the death penalty that you'd enter that  
17 proceeding already pretty much made up in your mind that the  
18 death penalty would not be the appropriate sentence?

19 THE JUROR: Yes.

20 MR. WEINREB: And then moving to the -- moving to the  
21 second question, let's say that you were in the jury room and  
22 you were viewing this just as an intellectual matter -- well, I  
23 shouldn't say that. Let's just say that you're in the jury  
24 room, and you considered the evidence, and you're weighing it,  
25 and you've reached the conclusion in your mind that the case is

1 an appropriate case for the death penalty. But now comes the  
2 time where you actually have to vote to sentence someone to  
3 death. And the question is: Could you do that, in any case?

4 THE JUROR: I -- I don't know. I don't think so.

5 MR. WEINREB: Thank you.

6 MS. CONRAD: Good morning, sir. My name is Miriam  
7 Conrad.

8 You said that you thought life without parole was most  
9 appropriate in this case. But the question really is  
10 whether -- understanding that a juror never is required to vote  
11 for the death penalty, whether you could listen to the evidence  
12 and listen to the arguments by both sides and consider both  
13 options before deciding which penalty is most appropriate?

14 THE JUROR: I believe I could do that.

15 MS. CONRAD: And if there were a case -- not  
16 necessarily this case -- but if there were a case where, after  
17 listening to all the evidence, you decided, as a personal,  
18 individual matter, that the death penalty was the most  
19 appropriate penalty, could you vote for the death penalty?  
20 Again, not in this case; in any case that...

21 THE JUROR: I don't know. I honestly don't know.  
22 I've been wrestling with that for a month and a half now. I  
23 don't know.

24 MS. CONRAD: And you said that you've been thinking  
25 about this a lot since you filled out this form. And can you

1 tell us a little bit more about how or why your thinking has  
2 changed from what you put down on your form?

3 THE JUROR: Well, the time when the questionnaire was  
4 given to me, it was the first time I saw questions like that,  
5 and you need to respond immediately without a lot of time to  
6 think about it. So since I've completed it, I've been thinking  
7 about a lot of these questions.

8 MS. CONRAD: So I guess what I'm wondering, though, is  
9 what are some of the thoughts that you've had since then that  
10 have caused you to change your answer?

11 THE JUROR: Well, I've never been faced with having to  
12 come to a conclusion, in my mind, whether I could, in fact,  
13 impose -- agree to impose someone to death on actions that  
14 they've done. And I still have not come to a conclusion if  
15 I -- even listening to all the facts, I just don't know. If it  
16 came down to it, I just don't know.

17 MS. CONRAD: But you would be able to listen to all  
18 the facts and to consider the views of the other jurors?

19 MR. WEINREB: Objection.

20 THE COURT: You may answer that. It was leading, but  
21 that's all right. Go ahead. You could answer it.

22 THE JUROR: Could you repeat the question, please?

23 MS. CONRAD: Sure.

24 THE COURT: Why don't you rephrase it, since he's  
25 asked you to...

1 MS. CONRAD: Sure. Okay.

2 Can you tell us whether you would be able to listen to  
3 all of the facts, the arguments of both parties, and discuss  
4 with your fellow jurors their views before reaching a  
5 conclusion?

6 THE JUROR: Maybe I'm a little confused. I mean, I  
7 feel there's the --

8 MS. CONRAD: I'm not trying to confuse you, sir. I'm  
9 sorry if I am.

10 THE JUROR: Well, you know, I -- I can, you know,  
11 listen to all the different sides and -- I believe, and can  
12 understand that, based on those facts, you could make a  
13 decision either way and say it comes out that the decision  
14 should be that the evidence proves that the death penalty is  
15 appropriate. I just don't know if I would be able to go along  
16 with imposing it. Does that answer your question?

17 MS. CONRAD: Yes, but let me just push that a little  
18 bit further. It would still be your decision whether the death  
19 penalty was appropriate or not. It's not a question of looking  
20 at all the evidence and that dictates the answer. The question  
21 is whether you could consider all of those things before making  
22 up your mind one way or the other.

23 THE JUROR: I'm not sure.

24 MS. CONRAD: Thank you very much.

25 THE COURT: All right, sir. Thank you. That's it.



1 We'll put the form back together; just leave it. Thanks.

2 THE JURY CLERK: Right this way.

3 (The juror exits the courtroom.)

4 THE CLERK: Juror No. 406.

5 THE JURY CLERK: Juror 406.

6 (The juror enters the courtroom.)

7 THE CLERK: Ma'am, over here, please. Have a seat.

8 THE JUROR: Thank you.

9 THE CLERK: If you would do me a favor, keep your  
10 voice up, speak into the mic so everyone around the table can  
11 hear you, okay?

12 THE JUROR: Sure.

13 THE CLERK: Thank you.

14 THE COURT: Good morning.

15 THE JUROR: Good morning.

16 THE COURT: Since you were here to fill out the  
17 questionnaire, have you been able to follow the instructions to  
18 avoid talking about the case with anybody and also to avoid  
19 media coverage, if you could?

20 THE JUROR: Yes.

21 THE COURT: So we're going to follow up a little bit  
22 on some of the things you told us in your answers to the  
23 questionnaire.

24 THE JUROR: Sure.

25 THE COURT: Could you give us a little bit of an idea

1 what your work life is like.

2 THE JUROR: I'm in pharmaceutical sales. I work for a  
3 contract company that's affiliated with a major pharmaceutical  
4 company. That was actually one of my concerns because I am a  
5 contract employee.

6 THE COURT: What does that mean?

7 THE JUROR: Well, we're affiliated with one of the  
8 major pharma companies, but I don't work for the manufacturer  
9 directly. So I work for -- I don't want to say the name  
10 because I don't want to broadcast.

11 THE COURT: Yeah.

12 THE JUROR: But one of my concerns was I asked  
13 regarding jury duty, you know, what are the ramifications, will  
14 I get paid, will I hold my job. They will pay me for 20 days,  
15 and that's it. So that was one of my concerns.

16 THE COURT: How -- how are you normally paid? Is it a  
17 salary or is it --

18 THE JUROR: Salary.

19 THE COURT: -- commission-based or --

20 THE JUROR: Salary and commission. So I get paid  
21 twice a month.

22 THE COURT: How does that balance?

23 THE JUROR: Monetarily?

24 THE COURT: Yeah. Yeah. What percentage of your  
25 gross would be salary versus commission or vice versa?

1           THE JUROR: I make a very -- a very good salary.  
2 Commission is nominal.

3           THE COURT: All right.

4           THE JUROR: It could be --

5           THE COURT: All right.

6           THE JUROR: I don't know what the percentage is.

7           THE COURT: I'm trying to get the balance. Balanced  
8 heavily towards the salary?

9           THE JUROR: Yes.

10          THE COURT: And the company has told you that --

11          THE JUROR: Their policy, because I'm a contract  
12 employee, would be to pay for 20 days, and then after that  
13 there would be no pay. So that's a concern. I have a son in  
14 college.

15          THE COURT: All right. I don't think we're going to  
16 ask you to do that.

17          THE JUROR: Okay.

18          THE COURT: Thank you.

19          THE JUROR: Thank you.

20          (The juror exits the courtroom.)

21          THE COURT: 412 is coming tomorrow.

22          THE CLERK: Juror No. 413.

23          THE JURY CLERK: Juror 413.

24          (The juror enters the courtroom.)

25          THE CLERK: Sir, over here, please. Have a seat. And

1 do me a favor, keep your voice up and speak into the mic so  
2 everyone around here can hear you.

3 THE JUROR: Yes, sir.

4 THE COURT: Good morning.

5 THE JUROR: Good morning, sir.

6 THE COURT: Have you been able to avoid discussing the  
7 case with anyone since the last time you were here?

8 THE JUROR: Yes, sir.

9 THE COURT: And as well to avoid any media about the  
10 case?

11 THE JUROR: Yes, sir.

12 THE COURT: Tell us a little bit about your work.

13 THE JUROR: I'm an orthopedic physician's assistant.  
14 I work for Harvard Vanguard.

15 THE COURT: What does that mean? What do you do?

16 THE JUROR: Orthopedic PA. Basically I manage --  
17 largely the PA's job at Harvard Vanguard is taking care of sort  
18 of the older, complicated cases that don't need surgery:  
19 broken legs, ankles, wrist sprains, back pain, bursitis.

20 THE COURT: You treat those conditions or --

21 THE JUROR: Yes, sir. Injections. I also am an  
22 operative PA, so I operate on Thursdays with one of the sports  
23 medicine doctors.

24 THE COURT: Okay. You don't use social media, one of  
25 the questions we asked.

1 THE JUROR: Honest to God, I have never been on  
2 Facebook. I don't even know what it is. Twitter, same deal.  
3 I have an old teeny cell phone. I never use that, though.

4 THE COURT: Okay. Let me ask you -- that's the  
5 questionnaire you filled out. And I'm going to ask you to  
6 follow up on some things you told us in the questionnaire.

7 THE JUROR: Yes, sir.

8 THE COURT: If you look at page 20, Question 77 near  
9 the top.

10 THE JUROR: Uh-huh.

11 THE COURT: Here we asked whether, when you filled out  
12 the questionnaire, as a result of things you'd seen or read in  
13 the media or otherwise, had you formed an opinion that the  
14 defendant was guilty or that he should receive the death  
15 penalty, and you answered Part A, yes, you thought -- you had  
16 an opinion that he was guilty.

17 THE JUROR: Yes, sir.

18 THE COURT: And you didn't answer to B or C --

19 THE JUROR: Sorry.

20 THE COURT: -- but you answered D that you had an  
21 opinion that he should not receive the death penalty?

22 THE JUROR: I do not believe in the death penalty  
23 under any circumstances, so I'd have to say that's a yes.

24 THE COURT: Okay. And you actually wrote that in  
25 Question 78, you said that.

1           Let me turn to the -- we asked a series of questions  
2 to gauge people's view of the death penalty. If you go to page  
3 23, we asked in Question 88 for your general view, and you  
4 said, "I do not believe in the death penalty under any  
5 circumstances." I think that's almost exactly what you just  
6 said --

7           THE JUROR: Yes, sir.

8           THE COURT: -- a minute or two ago.

9           In the next question, we asked if you could put  
10 yourself on a scale of 1 to 10, with 1 being strongly opposed  
11 and reflecting a belief that the death penalty should never be  
12 imposed, as opposed to the other end of the spectrum, strongly  
13 in favor, where it should be routinely imposed.

14           You selected 1?

15           THE JUROR: That is correct.

16           THE COURT: Okay. And if you'd go to the next page,  
17 and Question 90, here, rather than asking for a number, we  
18 asked you to find a statement, if there was one, that you  
19 thought represented your view as to the death penalty.

20           THE JUROR: Yes, sir.

21           THE COURT: And you selected A, "I'm opposed to the  
22 death penalty and will never vote to impose it in any case, no  
23 matter what the facts."

24           THE JUROR: Yes, sir.

25           THE COURT: That's your view?

1 THE JUROR: Yes, sir.

2 THE COURT: Go to page 25 at the bottom, Question 95.  
3 We asked, now in reference to this case, if you found this  
4 defendant guilty and you decided the death penalty was the  
5 appropriate punishment for him, could you conscientiously vote  
6 for the death penalty --

7 THE JUROR: No, I could not.

8 THE COURT: -- and you said no. Right.

9 Okay. Any follow-up?

10 MR. WEINREB: No, your Honor.

11 MR. BRUCK: Just very briefly, if I may. My name is  
12 David Bruck, and I'm one of Jahar Tsarnaev's attorneys.

13 And what I want to explore with you about the death  
14 penalty is whether there is any distance between your own  
15 firmly held belief, which I certainly appreciate, and your  
16 ability to do your duty as a juror, because they could be two  
17 different things.

18 This is my question: Understanding that you oppose  
19 the death penalty under all circumstances, would you be able to  
20 serve on a jury and fairly consider both of the alternatives  
21 that are available under the law as jurors on a jury are  
22 required to do, the death penalty or life imprisonment,  
23 assuming, of course, that the defendant was first convicted of  
24 a capital crime? Could you consider them both?

25 THE JUROR: I'm a citizen of the United States. If I

1 vote to put somebody to death, I'm essentially, by proxy,  
2 putting that person to death. I've spent my entire life trying  
3 to make people better and healthy. I could never do that under  
4 any circumstances.

5 MR. BRUCK: All right. Thank you.

6 THE COURT: Thank you, sir.

7 THE JUROR: I'm done?

8 THE COURT: Yes. You have the questionnaire? Just  
9 leave it right there. Thanks.

10 (The juror exits the courtroom.)

11 THE COURT: 414 we're skipping, so we'll go to 419.

12 THE CLERK: Juror No. 419.

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
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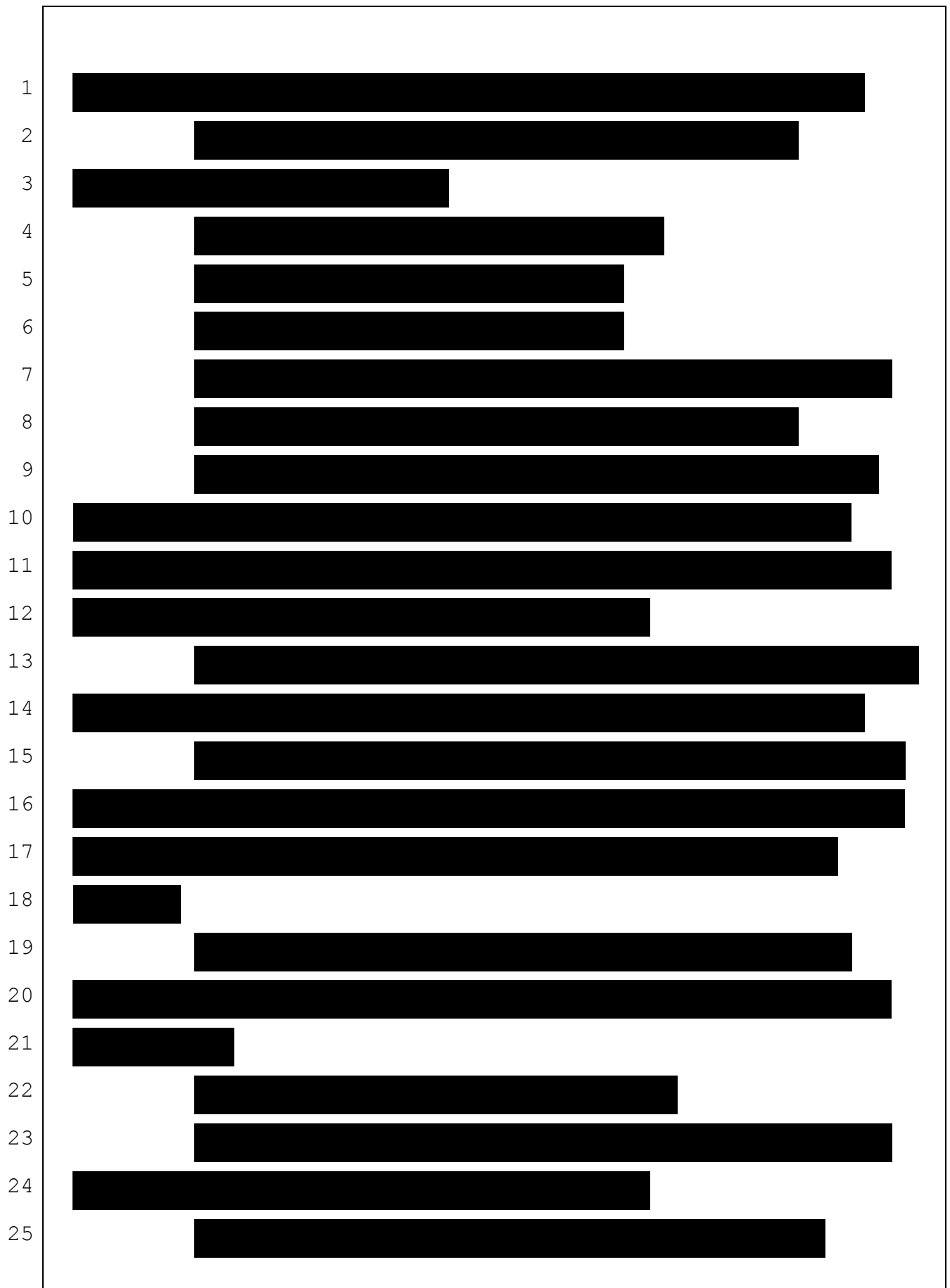
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16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 THE COURT: We're going to pass on Mr. 419.  
22 MS. CLARKE: Mr. 419.  
23 THE CLERK: Are we ready to go back on?  
24 THE COURT: Yeah. Let me just get organized here.  
25 421 we have passed, so we're up to 423.

1 Yes, we'll go back on.

2 THE CLERK: Phil, back on.

3 MR. DOREAU: Audio back on.

4 (In open court:)

5 THE CLERK: Next up is 423.

6 THE JURY CLERK: Juror No. 423.

7 THE CLERK: Sir, over here, please. Have a seat.

8 THE JUROR: Thank you.

9 THE CLERK: If you could do me a favor, keep your  
10 voice up, speak into the mic so everybody can hear you, okay?

11 THE JUROR: Okay.

12 THE COURT: Good afternoon.

13 THE JUROR: Good afternoon, sir.

14 THE COURT: Have you been able to follow my  
15 instructions not to discuss the substance of the case with  
16 anyone?

17 THE JUROR: Yes, sir.

18 THE COURT: And try to avoid media accounts as best  
19 you could?

20 THE JUROR: I've tried.

21 THE COURT: I know they're everywhere, but you've put  
22 them aside if you see them?

23 THE JUROR: Yes.

24 THE COURT: So we're going to follow up on some of the  
25 things you told us in the questionnaire.

1 THE JUROR: Okay.

2 THE COURT: And so you have it there if you want to  
3 look. Tell us a little -- you're now retired?

4 THE JUROR: Yes, I am.

5 THE COURT: And tell us what -- briefly what you did  
6 before you retired.

7 THE JUROR: I was a banker, commercial loan officer at  
8 the First National Bank of Boston for 20-plus years, and then  
9 continued that lending career with a small company that  
10 financed equipment for venture-capital-backed companies. So  
11 I've been in finance all of my life.

12 THE COURT: We asked about you or family or friends,  
13 connections with the military, and you told us your son was in  
14 the Marine Corps for about a dozen years, 2002 to 2014?

15 THE JUROR: Yes.

16 THE COURT: So he's out now, I gather?

17 THE JUROR: Yes, he's just out.

18 THE COURT: Okay. And I think you told us he served  
19 three tours in Iraq?

20 THE JUROR: Yes, he had three combat tours in Iraq as  
21 an infantry officer and fortunately returned intact, although a  
22 lot of his friends did not.

23 THE COURT: When was the last of those three tours, do  
24 you remember?

25 THE JUROR: I don't know -- I don't remember.

1 THE COURT: In Question 34 we asked about relationship  
2 with law enforcement agencies, and you said, "Son: Police,  
3 2014." Is that the same son?

4 THE JUROR: Yes.

5 THE COURT: So --

6 THE JUROR: Yes. He was applying for jobs when he got  
7 out of the Marine Corps, and one of them was -- he applied for  
8 the police force in California. He did not get that job and  
9 has subsequently gone to work for a defense contractor in the  
10 Washington, D.C., area.

11 THE COURT: Okay. We asked -- this is at page 14. We  
12 asked a series of questions about -- 44, 45, and 46, about  
13 whether you had strongly positive or negative views about  
14 prosecutors, defense attorneys, or law enforcement officers.  
15 Do you remember that series? You said "none" with respect to  
16 defense attorneys or law enforcement officers, but with respect  
17 to prosecutors, you said, "I believe some prosecutors have too  
18 much power/discretion."

19 What were you thinking that led you to write that?

20 THE JUROR: Well, I was thinking that I have learned,  
21 and I can't cite specifics, that prosecutors have enormous  
22 power to -- in our system, and occasionally I will read -- read  
23 about folks that have gotten out of prison after being wrongly  
24 convicted because of new DNA evidence or other evidence, and  
25 sometimes it's because the prosecutors made mistakes. And so I

1 think that's what I was thinking of.

2 THE COURT: Okay. Are these views that you developed  
3 mainly through reading about cases in the media or --

4 THE JUROR: Yes.

5 THE COURT: Rather than personal experience?

6 THE JUROR: I've had no personal experience.

7 THE COURT: Okay. You're an officer of the Trinity  
8 Church in Boston?

9 THE JUROR: Yes, sir. I'm its treasurer.

10 THE COURT: How long have you been an officer?

11 THE JUROR: Since 2012.

12 THE COURT: Okay. That's obviously in Copley Square  
13 and nearby the events. Were you or the church affected in some  
14 way by the events?

15 THE JUROR: The church was closed down for several  
16 days after the bombing. I guess it was part of the crime  
17 scene, so the church was unavailable. And a number of friends  
18 were spectators, some were runners, so it was an active  
19 presence. And I'm there quite frequently, so I'm in that area,  
20 so I have -- I go by the bomb sites, you know, on -- on  
21 Boylston.

22 THE COURT: Let me ask you to turn to page 20,  
23 Question 77, and near the top.

24 THE JUROR: Okay.

25 THE COURT: It's a multi-part question. We asked

1 whether -- as a result of things you'd seen or heard from the  
2 media or otherwise, whether you had various opinions, and you  
3 said, yes, you had an opinion that the defendant was guilty,  
4 and then further down, yes, you had an opinion that he should  
5 not receive the death penalty.

6 Let me ask you about the first one -- well, let me go  
7 to the next -- right after that series of subparts, there's a  
8 separate paragraph that says, "If you answered yes to any of  
9 these questions, would you be able or unable to set aside your  
10 opinion and base your decision about guilt or punishment solely  
11 on the evidence that would be presented to you in court?" And  
12 you selected the box "unable."

13 Could you tell us about that?

14 THE JUROR: I assume, like many people, I observed the  
15 defendant on videotape carrying the backpack on Boylston Street  
16 with his brother. I saw at least the news clips of him either  
17 in the boat or emerging from the boat. So it's hard to -- it's  
18 hard to believe that he wasn't responsible for these crimes.

19 THE COURT: Uh-huh. It's understandable under the  
20 circumstances that people have ideas about what happened and so  
21 on. What we ask jurors in the criminal process to do is to  
22 follow some principles of law, one of which is that the  
23 defendant is presumed innocent or not guilty unless the  
24 government proves that he's guilty by the evidence at trial.  
25 And so therefore we ask jurors to focus on that body of



1 evidence that is in the trial and see what that proves or  
2 doesn't prove.

3 THE JUROR: Right.

4 THE COURT: Would you be able to do that?

5 (Pause.)

6 THE JUROR: Well, you're a persuasive fellow.

7 (Laughter.)

8 THE JUROR: Having heard it stated the way you stated  
9 it, I think I probably could.

10 THE COURT: Okay. Let me ask you about Question 80.  
11 You have a friend who was in the stands and I guess right by  
12 the --

13 THE JUROR: Yes.

14 THE COURT: -- that's where they were, right by the  
15 finish line -- when the explosions happened. I'm having a  
16 little difficulty with the handwriting.

17 THE JUROR: Yeah, it was -- after 20 pages, it was  
18 beginning to go.

19 THE COURT: That's all right. We understand. And we  
20 know the conditions were not optimal as you filled it out.

21 But can you tell us about that, what your friend  
22 experienced.

23 THE JUROR: Yeah, I remember talking to her about it.  
24 She was one of my Trinity friends who had -- was in the stands,  
25 and she was -- heard the explosion. Her daughter was with her,

1 and they were able to make their way out of the stands and out  
2 of the area without any -- without any -- they didn't get hurt,  
3 but it just scared the hell out of them.

4 THE COURT: How old is her daughter?

5 THE JUROR: She is now 12, I believe.

6 THE COURT: On the next page, in 82, you told us you  
7 bought some T-shirts with Boston Strong logos?

8 THE JUROR: Yes.

9 THE COURT: Lots, a few?

10 THE JUROR: No, I think a couple of T-shirts. I have  
11 got two sons. I think I sent them to the boys.

12 THE COURT: We asked, beginning on page 23, at  
13 Question 88, a series of questions about jurors' thoughts or  
14 attitudes toward the death penalty. And I want to turn to  
15 those.

16 In Question 88 we asked if you had views about the  
17 death penalty in general, what are they, and you said you do  
18 not believe in the death penalty; that we are to follow "thou  
19 shall not kill" and would have a more peaceful society if we  
20 did.

21 Can you elaborate on that or let it stand as is?

22 THE JUROR: Sure. I have come to take my faith as a  
23 Christian more and more seriously as I've gotten older, and  
24 I -- I'm very grateful to Trinity Church for helping me do  
25 that. And what I wrote here, I firmly believe.

1           A second thing that informs this belief, Judge, is  
2     that -- in a sense is my military experience or -- you know, I  
3     served in the military for a couple of years during the Vietnam  
4     era. I didn't -- I wasn't in Vietnam, fortunately, but I knew  
5     many people who were. And as you know, tens of thousands of  
6     people -- U.S. soldiers were killed in that effort, in my  
7     opinion, for little good. I watched my son volunteer to go in  
8     the Marines and into Iraq, and while he is whole, many of his  
9     friends have been -- were killed or maimed, in my belief, for  
10    little purpose.

11           I think there's been too much killing during my  
12    lifetime, and I'm not prepared to participate in any more,  
13    particularly when, if this defendant is found guilty, there's  
14    an alternative, which is life in prison without a chance of  
15    release, as you've just told us.

16           So I am not going to participate in any process that  
17    kills anybody if I can help it.

18           THE COURT: Okay. Any follow-up questions?

19           MR. WEINREB: No, your Honor.

20           MS. CONRAD: No, your Honor.

21           THE COURT: Thank you very much.

22           THE JUROR: Thank you.

23           THE COURT: Just leave the paper there. That's fine.

24           THE CLERK: Thank you.

25           (The juror exits the courtroom.)

1 THE CLERK: Juror No. 425.

2 THE JURY CLERK: Juror No. 425.

3 (The juror enters the courtroom.)

4 THE CLERK: Have a seat.

5 THE JUROR: Hi.

6 THE COURT: Hi.

7 THE CLERK: And do me a favor, keep your voice up and  
8 speak into the mic so everyone can hear you.

9 THE JUROR: Yes.

10 THE COURT: So since you were last here, have you been  
11 able to avoid discussion of the substance of the case with  
12 people?

13 THE JUROR: Yes.

14 THE COURT: And also, as much as possible, avoid any  
15 media reporting on the case?

16 THE JUROR: Yes.

17 THE COURT: We have the questionnaire, copies, and  
18 that's your original. We just wanted to follow up on some of  
19 the answers you've given us.

20 Tell us a little bit about your work.

21 THE JUROR: I am a history teacher and a special  
22 education teacher at Lexington High School. I've been there  
23 for six years now, and I've been teaching since I've been 21,  
24 and I'm 47.

25 THE COURT: Okay. We asked jurors about social media.

1 You don't use it.

2 THE JUROR: I don't do any social media whatsoever.

3 THE COURT: We asked also whether you were a published  
4 or unpublished author. This is in Question 28 on page 10.

5 THE JUROR: Yes.

6 THE COURT: I can't quite read all the handwriting.

7 THE JUROR: I wrote some short stories that were never  
8 published, science fiction and an adventure one when I was  
9 younger, sort of like an Indiana Jones thing, yeah.

10 THE COURT: Let me ask you to look at page 20 and  
11 Question 77. In this multi-part question, we had asked whether  
12 you had formed various opinions based on things you had seen or  
13 read in the media or learned from other sources about whether  
14 the defendant was guilty or not or should receive the death  
15 penalty or not, and to each of the subparts you indicated your  
16 answer was "unsure."

17 THE JUROR: Correct.

18 THE COURT: Could you tell us about that?

19 THE JUROR: I'm unsure because I do not know all the  
20 evidence or have all the information at my fingertips, and I  
21 don't believe everything that's printed in the news or heard on  
22 the radio. So that's why -- and I -- as a teacher and a  
23 history teacher, I firmly believe someone's innocent until  
24 proven guilty and all the facts are before him or her as a  
25 juror. So that's why.

1           THE COURT: So you're right. That is the law, that a  
2 person accused of a crime is presumed to be innocent and is  
3 convicted only if the government persuades the jury by -- that  
4 he is guilty beyond a reasonable doubt, by the evidence at  
5 trial.

6           So you would be able to make your decision about  
7 whether the defendant was guilty or not guilty of any  
8 particular crime based on your assessment of the trial evidence  
9 and --

10          THE JUROR: Correct.

11          THE COURT: -- nothing else?

12          THE JUROR: Correct.

13          THE COURT: We asked jurors a series of questions  
14 about their attitudes towards the death penalty, both in  
15 general and perhaps in this case as well. That begins on page  
16 23 at Question 88. Question 88 itself asks for general views  
17 about the death penalty, and you said "none."

18          THE JUROR: I personally believe it's a case-by-case  
19 basis. I don't think it can be painted with a broad brush one  
20 way or the other, and I do believe people are entitled to a  
21 trial, and it depends on the evidence and whether or not the  
22 state allows it or, if it's in a federal case, whether or not  
23 it's warranted. So that's my stance on it. I really can't say  
24 one way or another, yes, definitively, I think in all cases  
25 people deserve it or not. I think it has to go case by case.

1 THE COURT: Okay. And if you look at your answer to  
2 Question 89, that's more or less what you indicated there?

3 THE JUROR: Yes.

4 THE COURT: And said you didn't think you could place  
5 yourself on the scale because it's --

6 THE JUROR: Correct. And then on the next page, you  
7 had actually -- you had a more -- of a definitive scale, in  
8 between, so --

9 THE COURT: Right. And that question, Number 90, it  
10 shows option D of the various statements.

11 THE JUROR: Yes.

12 THE COURT: And that is that you're not for or against  
13 the death penalty?

14 THE JUROR: In the middle.

15 THE COURT: You could vote to impose it or you could  
16 vote to impose a sentence of life in prison instead --

17 THE JUROR: Correct.

18 THE COURT: -- whichever you thought was called for by  
19 the facts in the case.

20 THE JUROR: Correct. That's absolutely right.

21 THE COURT: That's a good statement of your views?

22 THE JUROR: Yes, it mixed, what I wrote in my little  
23 chicken scratch.

24 THE COURT: Let me just ask you about Question 95 at  
25 the bottom of 25. There we put it in the context of this case

1 and said, if you found Mr. Tsarnaev guilty and you decided the  
2 death penalty was the appropriate punishment for him, could you  
3 conscientiously vote to impose the death penalty?

4 THE JUROR: Yes.

5 THE COURT: And similarly, the next page at the top,  
6 we asked if you found Mr. Tsarnaev guilty and you decided that  
7 life in prison without the possibility of release was the  
8 appropriate punishment for him, could you conscientiously vote  
9 for life in prison without the possibility of release?

10 THE JUROR: Yes.

11 THE COURT: And those remain your answers?

12 THE JUROR: Yes.

13 THE COURT: Follow-up?

14 MR. MELLIN: Thank you, your Honor.

15 Good afternoon, sir. I'm Steve Mellin. I'm one of  
16 the prosecutors on the case.

17 I want to try to drill down just a little bit on the  
18 death penalty issues. You've had a little bit of time since  
19 filling out this questionnaire to think about it, I'm sure, and  
20 as a history teacher, I would think that at some point it's  
21 kind of been some topic for you, or not?

22 THE JUROR: No, it hasn't been a topic because I teach  
23 world history, and we teach U.S. history, and none of the stuff  
24 we've covered has covered cases involving death penalties.

25 MR. MELLIN: Okay. As you sit here today, can you



1 elaborate a little bit on kind of where you come down on  
2 whether or not we should have a death penalty, should not have  
3 a death penalty?

4 THE JUROR: I think it's a state-by-state issue, not a  
5 federal one, in my opinion. I think that's up to the states to  
6 decide. I know in the federal area it is. But, again, I have  
7 to go back to what I wrote. It's on a case-by-case basis. I  
8 would have to look at the evidence and have to come to the very  
9 strong conclusions beyond a reasonable doubt that it warrants  
10 the death penalty. There's been many cases that I've read  
11 about that DNA has, you know, been wrong or other things, and  
12 so you have to tread lightly on that.

13 MR. MELLIN: Okay. If you were a juror on this case  
14 and the jury got to the point where the jury was deciding  
15 between life and death and you believed that the evidence in  
16 the case supported the death penalty, would you be able to vote  
17 to sentence someone to death?

18 MS. CLARKE: I object to "this case," your Honor.  
19 That's a stakeout question.

20 THE COURT: Yeah, yeah.

21 MR. MELLIN: In any case.

22 THE COURT: Make it a more general question. Correct.  
23 Why don't you start again.

24 MR. MELLIN: I will.

25 If you were a juror on a case in which the death

1 penalty was a consideration and the jury reached the point  
2 where the jury was deciding between life and death, if you  
3 heard all of that evidence and you believed that the death  
4 penalty was appropriate, would you be able to vote to sentence  
5 someone to death?

6 THE JUROR: Yes, I could. So long as the other 11  
7 people I worked with came to the same conclusion, then yes.

8 MR. MELLIN: You understand from a little bit of the  
9 instructions this morning, though, that ultimately it's a  
10 personal decision for each of the jurors. You understand that?

11 THE JUROR: Yes, to come to a consensus.

12 MR. MELLIN: And so I take from what you're saying  
13 that you would deliberate with the other jurors and --

14 THE JUROR: Of course.

15 MR. MELLIN: Okay. But you believe that if you came  
16 to that conclusion, you would be able to vote to impose the  
17 death penalty?

18 THE JUROR: Yes.

19 MR. MELLIN: Thank you.

20 MS. CLARKE: Good afternoon.

21 THE JUROR: Good afternoon.

22 MS. CLARKE: My name is Judy Clarke. I'm one of --

23 THE JUROR: Nice to meet you.

24 MS. CLARKE: -- Mr. Tsarnaev's lawyers.

25 Good to meet you too.

1           If I could just spend a little time with you asking  
2   you some questions. On Question 77, which the judge pointed  
3   you to on page --

4           THE JUROR: Question 77 you're referring to?

5           MS. CONRAD: Yes. Page 20.

6           THE COURT: Page 20.

7           MS. CONRAD: And you marked "unsure," "unsure," and  
8   understandably. You don't have the evidence in front of you.  
9   Have you ever had an opinion as to Mr. Tsarnaev's guilt?

10          THE JUROR: No, I didn't pay much attention to it in  
11   the media. I heard about the bombing, I heard that they  
12   arrested two individuals, and when it would come on the news, I  
13   would usually turn it and wasn't that interested in hearing  
14   much follow-up about it. I figured the police would follow  
15   through with what they need to do and...

16          MS. CLARKE: I'm sorry?

17          THE JUROR: That the police would follow through with  
18   the case and take care of it, so I didn't pay much attention to  
19   it after that.

20          MS. CLARKE: What else do you recall hearing or  
21   reading about the case in the media?

22          THE JUROR: I would just see clips on TV. I didn't  
23   read anything about it in the papers. I don't read the *Globe*  
24   or the *Herald* or -- I would just hear sometimes stuff on the  
25   radio and things like that, and on the news, just clips.

1 MS. CLARKE: Can you recall what that might have been?

2 MR. WEINREB: Objection.

3 THE COURT: Yeah, I don't think we have to go into it.

4 MS. CLARKE: There were a series of questions -- I  
5 think it started at the bottom of page 20, with 80, 81, 82, and  
6 it carried over into 83 about what sort of impact this -- the  
7 bombings and the events of that week might have had on people,  
8 and you marked "no." But they were pretty specific to  
9 personally affected, witnessed the bombing.

10 Can you tell us if you were affected in any way by the  
11 events of that week?

12 THE JUROR: Not personally. No immediate family, no  
13 friends, no one that I knew was affected by the bombings.

14 MS. CLARKE: Did you talk to anybody about the  
15 bombings or the events of that week?

16 THE JUROR: I talked to my cousin. He's a fireman in  
17 Everett, and asked him about it, and he just reaffirmed that,  
18 yes, there's been a bombing, and I asked him if he was there,  
19 and he said no, he wasn't there that day.

20 MS. CLARKE: Did he participate in any of the  
21 aftermath?

22 THE JUROR: No, no.

23 MS. CONRAD: Where were you on 15th of April, the day  
24 of the bombing?

25 THE JUROR: I was home. Home in Littleton, Mass.

1 MS. CLARKE: Okay. And how did you learn about the  
2 bombing?

3 THE JUROR: I think the TV, news.

4 MS. CLARKE: Just happened to see it on the news --

5 THE JUROR: Yeah.

6 MS. CONRAD: -- or followed it live?

7 THE JUROR: No, I didn't follow it. I just saw it on  
8 the news.

9 MS. CLARKE: Have you ever had any connection to the  
10 marathon? Do you go to the event?

11 THE JUROR: No, I try to avoid Boston on that day. I  
12 used to go to school at BU, so I...

13 MS. CLARKE: So you know what it's like.

14 THE JUROR: Yeah, I don't want to be in here.

15 MS. CLARKE: And where were you on the 19th of April?  
16 And you know what the significance of that day is, that's the  
17 shelter-in-place day and -- and the day of the --

18 THE JUROR: I know I wasn't near Boston. I know that.  
19 I can't recall. But I was probably home, or if it was a  
20 workday, I was at -- oh, was that vacation week?

21 THE COURT: Yeah.

22 MS. CLARKE: I think it might have been.

23 THE JUROR: I was home, then, with my daughters.

24 MS. CLARKE: And your kids are how old?

25 THE JUROR: I have two 13-year-olds, a 14-year-old,

1 and a 12-year-old. Four girls.

2 MS. CLARKE: Congratulations.

3 THE JUROR: Thank you.

4 MS. CLARKE: Good luck.

5 THE JUROR: Yeah. Very busy.

6 MS. CLARKE: It's interesting on your views about the  
7 death penalty. It sounds like maybe January 5th was the first  
8 time you really gave that issue much thought?

9 THE JUROR: Uh-huh.

10 MS. CLARKE: Is that right?

11 THE JUROR: Yeah, I don't think about the case, you  
12 know. It's not of interest to me, so I didn't -- the case  
13 itself is not something of interest where I would hear it on  
14 the radio and stop and listen or do something or on the TV.  
15 So, yes, when the questionnaire came out, and I had to fill  
16 this out...

17 MS. CLARKE: Right. Not so much the case but the  
18 death penalty as a social issue, a political issue.

19 THE JUROR: Oh, as a social issue? No, I don't give  
20 too much thought about it.

21 MS. CLARKE: So January 5th was really the first time  
22 you had been asked what are your views about --

23 THE JUROR: Directly asked, yes. Like, what do you,  
24 [REDACTED], feel about this? What would you do in this  
25 case? Yeah.

1 MS. CLARKE: Well, you live in Massachusetts, which is  
2 a state that does not have --

3 THE JUROR: -- have the death penalty. Correct.

4 MS. CLARKE: And how do you feel about that?

5 THE JUROR: That's what the people want, that's what  
6 the legislators vote for, so that's the law. I'm not upset  
7 about it, or it doesn't bother me one way or the other.

8 MS. CLARKE: One way or another. Since January 5th,  
9 and I think Mr. Mellin alluded to it, have you given more  
10 thought to your position on the death penalty? Not with regard  
11 to the case, but your position about the death penalty, period.

12 THE JUROR: No. It's right where -- the neutral area  
13 where I am. It just depends on the evidence. I could go one  
14 way or the other depending on the evidence on any case, so long  
15 as the evidence warrants one way or the other.

16 MS. CLARKE: And I guess you realize that it's an  
17 individual sort of reasoned moral judgment --

18 THE JUROR: Correct.

19 MS. CLARKE: -- that each individual gets to make.  
20 And I guess what we're all sort of trying to get at is, are you  
21 able to make the decision one way or the other?

22 THE JUROR: Yes.

23 MS. CLARKE: Without hesitation?

24 THE JUROR: Without hesitation, yes.

25 MS. CLARKE: Your kids are all school age?

1 THE JUROR: Correct.

2 MS. CLARKE: And did you talk to them about the  
3 bombing and what that meant?

4 THE JUROR: No. No.

5 MS. CLARKE: Did they come home and say, "Dad, what is  
6 that all about?"

7 MR. MELLIN: Objection.

8 THE COURT: Yeah, I think the answer is sufficient.

9 MS. CLARKE: Did it get discussed in your class?

10 THE JUROR: God, I can't remember. Did it? Not that  
11 I recall because it was over vacation; we came back. I  
12 don't -- I mean, there was talk of it in the teachers', of  
13 course, lounge, but I don't remember it being addressed in any  
14 of the classes that I co-teach in.

15 MS. CLARKE: Not a topic that the teachers would bring  
16 up and sort of address?

17 THE JUROR: No. No, we didn't talk about it.

18 MS. CLARKE: In your world history, do you cover any  
19 Russia, Chechnya, Kyrgyzstan, Kazakhstan, that sort of area of  
20 the world?

21 THE JUROR: World History 2, no. World History 2 --  
22 we might in World History 2, when we get into World War I and  
23 World War II.

24 MS. CLARKE: Any of the Chechen wars?

25 THE JUROR: No.



1 MS. CLARKE: That's just not a topic that's --

2 THE JUROR: -- popular in our curriculum? No, it's  
3 not in there.

4 MS. CLARKE: Can I have just one moment, Judge?

5 (Counsel confer off the record.)

6 MS. CLARKE: I guess I have one more follow-up  
7 question, if I can.

8 THE JUROR: Sure.

9 MS. CONRAD: It's my understanding that most of the  
10 schools had events supporting the One Fund or doing something  
11 with regard to the marathon. Did your kids' schools do that or  
12 your -- the school where you teach?

13 THE JUROR: Not -- I don't think we did it at  
14 Lexington. I can't recall them doing that or seeing any of the  
15 students or going around in homeroom with any of that. And the  
16 only thing my kids had at their school in Littleton is UNICEF  
17 that they do drives for.

18 MS. CLARKE: But nothing --

19 THE JUROR: I don't remember anything with the One  
20 Fund or anything like that.

21 MS. CLARKE: Thank you.

22 THE JUROR: You're welcome.

23 THE COURT: All right, sir. Thank you very much.

24 THE JUROR: Oh, thank you.

25 (The juror exits the courtroom.)

1 MR. WEINREB: Before we call the next witness, can I  
2 raise one quick thing? It's not sidebar.

3 THE COURT: Okay.

4 MR. WEINREB: I just want to point out the  
5 objection -- Mr. Mellin asked a question to which there was an  
6 objection by Ms. Clarke that it was a stakeout question because  
7 it asked about this case in particular, but I believe the  
8 question he asked was nearly verbatim Question No. 95. And  
9 regardless of how we may characterize it now, 95 and 96 were  
10 agreed-upon questions by the parties. And I think, at least to  
11 those two questions, any objection should be deemed waived or  
12 we can't follow up on them.

13 THE COURT: Okay. I don't remember the phrasing of  
14 the question, but --

15 MS. CLARKE: That's not how I heard it.

16 THE COURT: -- we have been asking 95 and 96  
17 consistently. Any question that was tracking that would be  
18 okay.

19 427.

20 THE CLERK: Juror No. 427.

21 THE COURT: Can I just have a minute before --

22 THE CLERK: Hold on.

23 THE COURT: I guess let's make this a quick sidebar, I  
24 think.

25 MR. DOREAU: Audio off.

1 (Discussion at sidebar and out of the hearing of the  
2 jury:)

3 THE COURT: This was one that was proposed jointly, I  
4 think, by the parties this morning, and I took a look at it.  
5 The reason that it was suggested to me for the parties' view,  
6 which may or may not be right, was that in Question 85 the  
7 juror recognized somebody on the witness list.

8 If that was the reason, I just wanted to discuss that  
9 a little. It seems to me that it's not necessarily a binary  
10 yes-or-no question. It may well depend on who the witness is,  
11 how likely the witness is to testify, how close the  
12 relationship is and so on. So I think it deserves examination  
13 when that's the only one. We had a second one, I think it was  
14 428, who knew a witness but also had a hardship, and I thought  
15 the hardship was sufficient.

16 But -- so going forward, I would like to maybe, mostly  
17 from the government, know the likelihood of such a person  
18 actually being a witness in the trial, and then we can explore  
19 how close the relationship is and whether it would have an  
20 effect and so on and so forth. So I just wanted to make that  
21 comment before we go.

22 MR. WEINREB: Yes.

23 MS. CLARKE: For this one, Bill, 895 is [REDACTED].

24 THE COURT: A Boston police officer?

25 MR. MELLIN: I don't believe he's going to be a

1 witness.

2 MR. WEINREB: I'm not sure.

3 THE COURT: So if that was --

4 MS. CLARKE: We should come together more often.

5 THE COURT: We can whittle down the witness list.

6 MR. WEINREB: I also agree that whether an affirmative  
7 answer to Question 85 should -- disqualifies a juror or not  
8 should depend on the factors the Court articulated.

9 THE COURT: Right. I wanted to, I guess, provide that  
10 guidance. That's my view. And if that -- we haven't really  
11 seen very many who recognize people on the witness list. I  
12 would say half a dozen at most. So it's not going to be a big  
13 problem, but I just wanted to explain why I wanted this held in  
14 the --

15 MS. CLARKE: We have got another one coming up at the  
16 end of the day.

17 THE COURT: Oh, we do? Well, we'll get --

18 MS. CONRAD: They know a victim.

19 MS. CLARKE: No, 437 knows a pretty major witness.

20 THE COURT: Okay. Well, I'll look at that.

21 Okay. We're ready to go back on live.

22 THE CLERK: Back on, Phil.

23 MR. DOREAU: Audio on.

24 (In open court:)

25 THE CLERK: 427.

1 THE JURY CLERK: Juror No. 427.

2 (The juror enters the courtroom.)

3 THE CLERK: Ma'am, over here, please, if you would.  
4 Have a seat. Keep your voice up and speak into the mic, okay?

5 THE JUROR: Sure.

6 THE COURT: Good afternoon.

7 THE JUROR: Good afternoon.

8 THE COURT: Since you were last here, have you been  
9 able to follow the instructions to avoid talking about the  
10 substance of the case with anyone?

11 THE JUROR: Absolutely.

12 THE COURT: And as much as possible to turn away from  
13 any media reports that you get exposed to?

14 THE JUROR: Yes. My husband's been very good about  
15 changing it.

16 THE COURT: Okay. Good.

17 So that's the questionnaire. We're just going to  
18 follow up on some of the things you told us.

19 First, you're a special ed assistant?

20 THE JUROR: Right.

21 THE COURT: Is that a distinction from a teacher?  
22 You're an assistant teacher or --

23 THE JUROR: Well, I call myself a teacher, but I'm  
24 basically a one-to-one aide for special needs students.

25 THE COURT: And in the public schools in Amesbury?

1 THE JUROR: Yes.

2 THE COURT: We asked about use of social media.

3 THE JUROR: Right.

4 THE COURT: If you want to look on -- this is at page  
5 10, at the bottom.

6 THE JUROR: Yup.

7 THE COURT: You use Facebook --

8 THE JUROR: Right.

9 THE COURT: -- on a weekly basis, I guess, and you  
10 said you mostly post about your children, and then inspiration  
11 messages. I just wanted you to explain what you're talking  
12 about.

13 THE JUROR: You know, things like you find a picture  
14 of some -- like a butterfly and it talks about, you know,  
15 happiness is this or that, you know, those kinds of things.

16 THE COURT: You've had prior -- actually, fairly  
17 recent jury experience --

18 THE JUROR: Yes.

19 THE COURT: -- as a juror.

20 And it was a civil case?

21 THE JUROR: Right. And I think I said I -- I said I  
22 think it was 2012, but it was 2013, so it was two years ago,  
23 February.

24 THE COURT: And that was in Lawrence Superior Court?

25 THE JUROR: Right.

1 THE COURT: You said -- this is in Question 48 on page  
2 15. You said it was a great experience --

3 THE JUROR: Uh-huh.

4 THE COURT: -- which we're happy to hear.

5 You said you weren't the foreperson, but you did help  
6 decipher through the evidence.

7 Could you tell us what you meant by that?

8 THE JUROR: Basically, we had trouble coming to a  
9 conclusion, so we went home, we had come back, you know, the  
10 next day, and I just led -- led it as, you know, let's hear  
11 from everybody why you're saying no, why you're saying yes.  
12 And as they would go, you know, I went through my notes, went  
13 through what we had, was able to say, "But look at" -- you  
14 know, "Look at it this way," or, you know, "Look at what they  
15 said," you know, those kinds of things.

16 THE COURT: Okay.

17 THE JUROR: I was involved in that. And maybe  
18 probably about four others might have been more heavily  
19 involved in that way.

20 THE COURT: This is a 12-person jury?

21 THE JUROR: Yes.

22 THE COURT: Let me ask you to turn to page 20. In  
23 Question 77, near the top, we asked a series of questions about  
24 whether you had formed any opinions based on things you'd seen  
25 in the news or from other sources.

1 THE JUROR: Right.

2 THE COURT: And in Part A we asked if you had formed  
3 an opinion that the defendant was guilty, and you checked  
4 "yes." And then on C and D regarding the possibility of the  
5 death penalty, you said you were unsure in those boxes.

6 Down below that, we then said, if you answered "yes"  
7 to any of these questions, would you be able or unable to set  
8 aside your opinion and base your decision about guilt in this  
9 case -- that's the one you checked "yes" for -- would you be  
10 able to base your decision about guilt based solely on the  
11 evidence presented to you in court, and you checked "able."

12 THE JUROR: Right.

13 THE COURT: Can you tell us why you made that  
14 selection?

15 THE JUROR: You know, basically, my feeling is, yes,  
16 that he's guilty, from what I know of the media, from what I  
17 saw on TV, but I am the type of person that -- well, most of  
18 the time there's three sides to a story, you know, his, hers,  
19 and the truth kind of a thing. But I believe that we don't  
20 know everything, so I'm not going to say -- I don't come right  
21 away and say, absolutely, you can't tell me anything that's  
22 going to change my mind, you know. I am just that way. I  
23 respect this process enough that -- that I would -- I would be  
24 able to listen to all sides.

25 THE COURT: So you've had jury experience, but it



1 wasn't a criminal case?

2 THE JUROR: No.

3 THE COURT: I'm sure you know that in a criminal case  
4 when someone's accused of a crime the person is presumed to be  
5 innocent of the crime charged unless and until the government  
6 proves that the person is guilty by the evidence at trial and  
7 proves that beyond a reasonable doubt.

8 THE JUROR: True.

9 THE COURT: You're familiar with those concepts?

10 THE JUROR: Right. Right.

11 THE COURT: A defendant never has any burden to prove  
12 he's not guilty; the burden is always with the government to  
13 prove that he is guilty.

14 THE JUROR: Okay.

15 THE COURT: You understand that?

16 THE JUROR: Uh-huh.

17 THE COURT: So what we ask a jury to do, the members  
18 of the jury, in a criminal case is to set the default position  
19 at not guilty and then listen to the evidence and consider  
20 whether, at the end, considering everything that's been  
21 produced, whether the government has satisfied its burden of  
22 proof by showing by the evidence the person is, in fact, guilty  
23 beyond a reasonable doubt.

24 Do you think you would be able to follow those  
25 principles if you were a juror in this case --

1 THE JUROR: So...

2 THE COURT: -- notwithstanding any prior opinions?

3 THE JUROR: Right. I see what you're saying. Because  
4 obviously the question I answered truthfully --

5 THE COURT: Right.

6 THE JUROR: -- you know.

7 But what you're saying now is would I be able to come  
8 in and say he's not guilty and -- by our law, he's not guilty  
9 until everybody kind of says what they need to say? I feel I  
10 could do that but want to be up-front that from what I've seen  
11 on the TV at the time that it was happening, there still is  
12 that, in the back of my mind, sort of feeling of guilt. But  
13 I'm not saying that I wouldn't -- because I respect the  
14 process, I'm not saying that I wouldn't be able to cast aside  
15 those. I'm saying I would be able to and listen to both sides.

16 THE COURT: Okay. Let me ask you about Question 80 at  
17 the bottom of the page.

18 THE JUROR: Uh-huh.

19 THE COURT: You had a friend who was near the site of  
20 the explosions, I gather?

21 THE JUROR: Right.

22 THE COURT: And she and her ten-year-old son had to  
23 run away and you said hide out in a college student's room?  
24 Can you tell me about that?

25 THE JUROR: She was there with her family, with her

1 husband as well. Her husband had to go a different way and  
2 help someone else. But she ran with her son down the street,  
3 and a college student had come out and said, "Come up here.  
4 Come up and hide up here." So she stayed in a --

5 THE COURT: Where was that, do you know?

6 THE JUROR: I don't know the exact location.

7 THE COURT: Are you familiar with downtown Boston?

8 THE JUROR: Not really.

9 THE COURT: You said her husband had to help someone  
10 else?

11 THE JUROR: Yes. They went as a group of  
12 other -- other friends that they were with, and he had to -- I  
13 don't know which way, but he had to go find -- make sure those  
14 people were okay too, so he went -- and they were like, "Meet  
15 us down here," and, you know, that kind of thing.

16 THE COURT: So when you say "help somebody," you mean  
17 they were trying to locate everybody and make sure they were --

18 THE JUROR: Just locate them and -- yeah. I mean, it  
19 could have been --

20 THE COURT: As opposed to --

21 THE JUROR: -- ten feet away. I don't know.

22 THE COURT: Right. As opposed to helping someone who  
23 had been injured?

24 THE JUROR: Right. Right. It wasn't anybody that was  
25 injured. It was just --

1 THE COURT: Account for everybody?

2 THE JUROR: Right.

3 THE COURT: Okay. Now, has that -- does that leave  
4 you with some impressions that might affect you as a juror in  
5 this case?

6 THE JUROR: I mean, she's a very good friend of mine,  
7 and at that time it was obviously devastating for her and her  
8 son, so I would say yes, there is some emotional feeling that I  
9 have toward it -- about it.

10 THE COURT: Would it -- would it affect your judgment  
11 in the case?

12 THE JUROR: I can't say yes or no, really. You know,  
13 I just want to be honest that, I mean, I guess -- I guess as  
14 the trial could go along, the emotions could, you know, come up  
15 in such a way that maybe it would.

16 THE COURT: Okay. Let me ask you to turn to page 22,  
17 Question 85.

18 THE JUROR: Uh-huh.

19 THE COURT: You said that -- I'm going to show you the  
20 list here. You said that you recognized one of the --

21 THE JUROR: Yes.

22 THE COURT: -- witnesses?

23 Could you tell us a little bit about how you know that  
24 person?

25 THE JUROR: Yep. It's actually my best

1 friend's -- her sister -- so it's her niece's husband. It's  
2 her niece's husband, which -- actually, ex, I should say. I've  
3 only met him once at a graduation party. "Hi, how are you?  
4 Nice to meet you," and that's it.

5 THE COURT: Okay. So you know who he is?

6 THE JUROR: I know who he is.

7 THE COURT: But you --

8 THE JUROR: Do I know any circumstances of him within  
9 the case? Maybe the only thing I remember my friend maybe  
10 saying was, you know, "Oh, he was driving around, and it was  
11 hard and" -- you know, whatever, something on that idea. I  
12 don't really remember anything specific.

13 THE COURT: When was the graduation party you're  
14 referring to?

15 THE JUROR: Oh, gosh. Her daughter is 21, so it was a  
16 high school graduation.

17 THE COURT: So about three years ago?

18 THE JUROR: Three, maybe a little bit more. It would  
19 have been a June of whatever year. Well, all right. 18, 19,  
20 20, 21. Yeah, I would say three.

21 THE COURT: Okay. On page 23, beginning at Question  
22 88, we asked a series of questions to gauge what jurors might  
23 think about the death penalty in general and perhaps related to  
24 this matter as well. Question 88 itself was a general  
25 question, if you have any general views, what are they, and you

1 said that you believe it, the death penalty, should be used for  
2 certain crimes, usually the more heinous crimes.

3 THE JUROR: Yeah.

4 THE COURT: Anything you want to add to that?

5 THE JUROR: When I think of it, you know, I'll be  
6 honest, it's more like child murderers, pedophiles would be my  
7 strongest criminals that I would not have a problem...

8 THE COURT: Okay. In Question 89 we asked you to try  
9 to place yourself on a 10-level scale, strongly opposed at  
10 number 1 to strongly favor at number 10, number 10 being a  
11 belief that it -- the death penalty should be imposed whenever  
12 the defendant had been convicted of intentional murder. You  
13 selected 8, which is not in the middle. It's halfway up the  
14 high end of the scale.

15 THE JUROR: Yeah.

16 THE COURT: Tell us what you were thinking about that.

17 THE JUROR: Well, I tend to, on any scale, not, you  
18 know, go right to the end or right to the beginning of things,  
19 and I probably -- in there, because most crimes that include  
20 the death of someone if found guilty is, you know, pretty bad  
21 to me, so I would think that I believe in it more than I don't  
22 believe in it.

23 THE COURT: Okay. If you'd go to the next page,  
24 Question 90, we asked you, rather than picking a number on a  
25 scale, if you could find a formulation of your opinion among

1 the several options that were presented there, and you selected  
2 E as the option, which was, "I'm in favor of the death penalty,  
3 but I could vote for a sentence of life imprisonment without  
4 the possibility of release if I believed that sentence was  
5 called for by the facts and the law of the case."

6 THE JUROR: Right.

7 THE COURT: Does that continue to represent your --

8 THE JUROR: Yes.

9 THE COURT: -- point of view on this matter?

10 THE JUROR: Yes. Even though -- you know, and I have  
11 thoughts about life imprisonment as well, and I know it's in  
12 there. But I could give you, like, an example if you want.

13 THE COURT: An example of?

14 THE JUROR: Of like cases that I would -- either death  
15 penalty or --

16 THE COURT: All right.

17 THE JUROR: So cases that, you know, I may know of,  
18 like someone like Andrea Yates who drowned her five children in  
19 Texas, I think it was, for someone like her, very sick,  
20 postpartum, you know -- from what I know, someone like her, I  
21 probably would do life in prison.

22 Someone like Susan Smith who killed her two boys,  
23 pushing the car into the river over the fact that she wanted to  
24 be with a certain lover, whoever, someone like her, I feel  
25 that's more heinous, and I would be okay with death penalty for

1 her.

2 THE COURT: You seem a little familiar with those  
3 cases.

4 THE JUROR: Yeah. I mean --

5 (Laughter.)

6 THE JUROR: Well, honestly, I used to watch court TV a  
7 long time ago, a long time ago when, you know, I was home,  
8 so...

9 But those are the -- you know, I want to -- that's  
10 where I would -- those are the kind of cases that I would weigh  
11 like if -- if there's a mental illness or something on that  
12 idea that's proven, you know, I might -- I would go more toward  
13 the life in prison.

14 THE COURT: Okay. Let me ask you to look at the  
15 bottom of page 25, Question 95. We asked, in the context of  
16 this case, if you found Mr. Tsarnaev guilty and you decided  
17 that the death penalty was the appropriate punishment for him,  
18 could you conscientiously vote for the death penalty, and you  
19 indicated "yes"?

20 THE JUROR: Right.

21 THE COURT: Does that represent your view?

22 THE JUROR: Yup.

23 THE COURT: And at the top of the next page we asked  
24 if you found Mr. Tsarnaev guilty and you decided life  
25 imprisonment without the possibility of release was the



1 appropriate punishment for him, could you conscientiously vote  
2 for that penalty?

3 THE JUROR: Yes.

4 THE COURT: And you said "yes."

5 THE JUROR: Yes.

6 THE COURT: And that continues to be your view?

7 THE JUROR: Right.

8 THE COURT: Follow-up?

9 MR. WEINREB: Thank you, your Honor.

10 Good afternoon.

11 THE JUROR: Good afternoon.

12 MR. WEINREB: My name is Bill Weinreb. I'm one of the  
13 prosecutors in the case. I just wanted to follow up on a few  
14 of your answers.

15 THE JUROR: Sure.

16 MR. WEINREB: So -- I'm sorry. I just want to find --  
17 with respect to your friend who was at the marathon.

18 THE JUROR: Right.

19 MR. WEINREB: I think you were asked a question by the  
20 judge about whether anything about that experience would affect  
21 your ability to be a juror in this case, and I want to phrase  
22 the question a little bit differently, which is to ask this:  
23 So as a juror, your duty is to listen to the law as the judge  
24 gives it to you and apply it and to decide the case on the  
25 facts that are -- the evidence that's presented in court, not

1 on things that happened outside.

2 THE JUROR: Right.

3 MR. WEINREB: And the question really is: Is there  
4 anything about that experience that you believe would prevent  
5 you from fulfilling that duty?

6 THE JUROR: No. I see, you know, where you're going.  
7 In, like -- I'll say it again: Because I respect this process  
8 so much, that that experience I could put aside.

9 MR. WEINREB: And then I have the same question about  
10 the question of the defendant's guilt or innocence. So as you  
11 correctly put it, when you walk into the courtroom, the  
12 defendant's not guilty, and he remains that way all throughout  
13 the trial, unless and until --

14 MR. BRUCK: I'm going to object to the whole long  
15 buildup. I think the government should ask a question.

16 THE COURT: Well, no. Go ahead. Go ahead.

17 MR. WEINREB: -- unless and until the government  
18 proves him guilty beyond a reasonable doubt. And if the  
19 government doesn't present evidence, you can't fill it in with  
20 stuff you've heard outside of the courtroom.

21 Are you able to abide by those rules?

22 THE JUROR: Absolutely.

23 MR. WEINREB: On the question of the death penalty, as  
24 the judge explained earlier, if the defendant in a capital  
25 case, the case where the death penalty's a possibility, is

1 found guilty of a capital crime, there's a second phase of the  
2 trial. So now he's already been found guilty of an intentional  
3 murder.

4 THE JUROR: Right.

5 MR. WEINREB: And now the question is, what's the  
6 appropriate penalty? And the government will present evidence  
7 of aggravating factors, factors that the government believes  
8 warrant a sentence of death. And the defense will present  
9 evidence of mitigating factors, factors about the crime or  
10 about the defendant that they believe make this a case where  
11 death is not appropriate.

12 The question is: Could you weigh the aggravating  
13 factors and the mitigating factors in making a decision, and  
14 are you open to the possibility of either decision, meaning  
15 that you could be persuaded one way; you could be persuaded the  
16 other way?

17 THE JUROR: Yes.

18 MR. WEINREB: Okay. And is there anything about this  
19 case where you feel that your answer would be different, that  
20 you couldn't do it in this case?

21 THE JUROR: That I couldn't do what?

22 MR. WEINREB: You couldn't weigh aggravating factors  
23 and mitigating factors and give both meaningful consideration  
24 and make a decision accordingly?

25 THE JUROR: Maybe just the emotion behind it would be

1 hard to get around, you know, the death of the people, the  
2 emotional part of it.

3 MR. WEINREB: Okay. So let me ask you more about  
4 that. So in any case where the death penalty is a possibility,  
5 there are dead people --

6 THE JUROR: Right.

7 MR. WEINREB: -- at least one dead person, because  
8 it's only murder where you have the capital punishment. And so  
9 are you saying there's something different about an  
10 ordinary -- another case you might sit on, not any particular  
11 one -- but I guess what I'm getting at is, is are you capable  
12 of fulfilling the duties of a juror in this case, meaning  
13 capable of weighing aggravating factors and mitigating factors  
14 and giving both of them meaningful consideration. I'm not  
15 asking you --

16 THE JUROR: Meaningful consideration? I mean, I  
17 believe I would be, absolutely. But I just, you know, in  
18 general, this is going to be an emotional case, so I...

19 MR. WEINREB: Fair enough.

20 THE JUROR: But, yes, I see what you're saying, yes.

21 MR. WEINREB: Okay. So cases can be emotional, and  
22 you can be emotional, and that's not against the rules. But  
23 the rules do require that you not let your emotions control how  
24 you decide a case.

25 THE JUROR: Right.

1 MR. WEINREB: Can you do that? Can you --

2 THE JUROR: I believe I could, yes.

3 MR. WEINREB: Okay. Not decide the case  
4 unemotionally, but keep your emotions enough in check so that  
5 you're giving meaningful consideration to the evidence and  
6 deciding the case on the evidence?

7 THE JUROR: Right. Yes.

8 MR. WEINREB: So I guess the real question is: If  
9 you're selected as a juror and the jury finds the defendant  
10 guilty in any case, and the case enters a penalty phase, do you  
11 go into the penalty phase with your mind already made up just  
12 because it's a murder case, or do you have an open mind about  
13 the penalty?

14 THE JUROR: Well, I would say I have an open mind  
15 because I clearly state I could go either way.

16 MR. WEINREB: Right. Thanks very much.

17 THE JUROR: You're welcome.

18 MR. BRUCK: Good afternoon.

19 THE JUROR: Hello.

20 MR. BRUCK: Hi.

21 THE JUROR: Good afternoon.

22 MR. BRUCK: My name is David Bruck, and I'm one of the  
23 lawyers for Jahar Tsarnaev. And if it's okay, I would like to  
24 ask you some questions.

25 THE JUROR: Sure.

1 MR. BRUCK: You're a special ed -- your field is  
2 special ed; you work with kids? Do you get paid if you're on  
3 the jury?

4 THE JUROR: I think it's three days. I have a  
5 contract that says jury duty, three days.

6 MR. BRUCK: So if this trial was three or four  
7 months --

8 THE JUROR: Right. I would not.

9 MR. BRUCK: Okay. Would that pose a hardship for you?

10 THE JUROR: Well, of course. And I would have to pay  
11 for my health insurance.

12 MR. BRUCK: Well, this is the last chance you get --

13 THE JUROR: Right.

14 MR. BRUCK: -- to say whether or not serving on the  
15 jury is going to pose an undue hardship for you, so we really  
16 need to hear from you.

17 THE JUROR: Yeah. I mean, I'll be honest. The amount  
18 of money that I make is not completely detrimental to my  
19 household. My husband does well. So I'm not that freaked out  
20 about that, if I could say it that way.

21 MR. BRUCK: Sure.

22 THE JUROR: I mean, it's a hardship generally. You  
23 know, I have bills to pay. I have credit cards to pay. I have  
24 one in college, you know, one child in college, that kind of  
25 thing. But it's not like I'm making 50-, 60-, 70-, \$100,000,

1 so...

2 MR. BRUCK: Okay. The reason I'm asking you now is  
3 that once you're on the jury, it's too late to say, "Whoa, this  
4 is proving to be hard" --

5 THE JUROR: I understand.

6 MR. BRUCK: -- "I need to get off."

7 THE JUROR: Right. Yeah. No, I understand.

8 MR. BRUCK: And what about the kids you work with? Do  
9 you have a concern about who will work with them when you're  
10 gone if you were to serve three or four months?

11 THE JUROR: I mean, my school system, you know, does a  
12 great job at replacing people when they need to. You know, and  
13 the kids are essentially resilient to that kind of thing,  
14 so -- changes like that.

15 MR. BRUCK: Okay. Now, you remember Judge O'Toole  
16 this morning said that all he is asking for, all the system is  
17 asking for during this questioning, is how you really and truly  
18 feel.

19 THE JUROR: Right.

20 MR. BRUCK: And if you answer the truth, no matter  
21 what your answers are, you're doing your duty as a citizen and  
22 as a juror. So in that spirit, I appreciate what you've told  
23 him. I could see that you were struggling with some of the  
24 answers, and I want to pursue that a little bit.

25 THE JUROR: Okay.

1 MS. CLARKE: Go as deep as we can.

2 MR. WEINREB: Your Honor, I object to this,  
3 instructing the juror how she's feeling about the questions.

4 THE COURT: All right. So let's get to the questions.

5 MR. BRUCK: All right.

6 I want to go back to before you got your jury summons.  
7 In other words, before you thought about being a juror, you  
8 were just a resident of this state, area.

9 THE JUROR: Okay.

10 MR. BRUCK: And of course had heard about -- quite a  
11 bit about the Boston Marathon bombing. And you say you had an  
12 opinion that the defendant -- you had formed an opinion, based  
13 on that everything you heard, that the defendant was guilty.

14 THE JUROR: Right.

15 MR. BRUCK: Did you also form an opinion about whether  
16 he should receive the death penalty before you got your  
17 summons?

18 THE JUROR: I'm kind of not like that. I mean, people  
19 around me have. I'm not -- I wasn't strong and vocal with that  
20 kind of a thing. So, no, I really didn't.

21 MR. BRUCK: The people around you, tell me a little  
22 bit more about that. And who --

23 THE JUROR: People around me --

24 MR. WEINREB: Objection.

25 THE COURT: I think you have to target it a little bit



1 better.

2 MR. BRUCK: Well, I mean, were these -- people around  
3 you were expressing an opinion about the death penalty?

4 THE JUROR: Not at the time that it happened.

5 MR. BRUCK: Right.

6 THE JUROR: More so after receiving the jury summons  
7 and I had to tell my workplace, so I would say the majority of  
8 the people at my workplace have no problem telling me, you  
9 know...

10 MR. BRUCK: And what did they say?

11 THE JUROR: They basically said --

12 MR. WEINREB: Objection, your Honor.

13 THE COURT: Go ahead.

14 THE JUROR: They basically said, "Fry him."

15 MR. BRUCK: "Fry him." These are people you work with  
16 that --

17 THE JUROR: Yes.

18 MR. BRUCK: How many people said things to that  
19 effect?

20 MR. WEINREB: Objection.

21 THE COURT: Go ahead.

22 THE JUROR: Maybe a handful.

23 MR. BRUCK: Okay. These are coworkers, people you see  
24 every day.

25 THE JUROR: Right, right.

1 MR. BRUCK: And you'll see again if you --

2 THE JUROR: Yes.

3 MR. WEINREB: Objection.

4 THE COURT: Yeah, I think a little less directive  
5 questioning.

6 MR. BRUCK: Oh, sure.

7 Now, you -- sometimes when we say "opinion," people  
8 think, well, that needs to be a really firm idea. What I'm  
9 really asking you for is, did you lean either way before you  
10 thought about being a juror, before you had any reason to think  
11 about being a juror?

12 THE JUROR: Lean about death penalty?

13 MR. BRUCK: Uh-huh.

14 THE JUROR: No.

15 MR. BRUCK: In this case.

16 THE JUROR: No.

17 MR. BRUCK: Did you think about it at all?

18 THE JUROR: No, I...

19 MR. BRUCK: The people who you -- who expressed an  
20 opinion at work, are any of them people who supervise you?

21 THE JUROR: No, colleagues. Just my colleagues.

22 MR. BRUCK: Okay. Now, you told us a little bit about  
23 the sorts of cases in which you think the death penalty would  
24 be or wouldn't be appropriate. And you may have noticed on the  
25 jury form, and you may know from listening about the case --

1 MR. WEINREB: Your Honor, I object. This is going to  
2 be asking about the facts of this case.

3 THE COURT: Yeah, it sounds like it.

4 MR. BRUCK: No. I guess the question is: Mr. Weinreb  
5 asked you whether -- well, let me back up a little bit.

6 You know from all the information, including the jury  
7 form --

8 MR. WEINREB: Objection. That's the same thing.

9 MR. BRUCK: I haven't asked the question yet.

10 THE COURT: No, but it does sound like you want to put  
11 the facts of the case to her, and that's not right.

12 MR. BRUCK: The question is: This case includes --

13 MR. WEINREB: Objection, your Honor. That is the  
14 exact thing.

15 MR. BRUCK: I'm not asking about the death penalty.  
16 I'm really -- I think I should just be allowed to ask the  
17 question before there's an objection.

18 THE COURT: Well, if it's going to posit the facts of  
19 the case, then I think it's out, to the extent it asks for an  
20 opinion about those facts.

21 MR. BRUCK: Well, no, it doesn't.

22 The question I want to ask you is whether any  
23 of -- whether it would be hard for you to be completely fair  
24 and impartial in a case involving, as you know, the murder of  
25 an eight-year-old.

1 MR. WEINREB: Objection, your Honor. That is exactly  
2 the question that has not been permitted under the Court's many  
3 prior rulings.

4 MR. BRUCK: That's not so.

5 THE COURT: Well, no, I think the juror -- prospective  
6 juror, did talk about the potential emotional component to the  
7 case, so you can explore that.

8 MR. BRUCK: Thank you.

9 I can ask the question again.

10 THE JUROR: You need to, yes.

11 (Laughter.)

12 MR. BRUCK: There were some interruptions.

13 The question -- what we're concerned about is whether  
14 this is a case in which you are confident that you could remain  
15 objective and fair and impartial. And one of the facts of this  
16 case is that it involves --

17 MR. WEINREB: Objection, your Honor. That's --

18 THE COURT: No, go ahead.

19 MR. BRUCK: -- that it involves the murder of an  
20 eight-year-old child.

21 THE JUROR: Uh-huh.

22 MR. BRUCK: You know yourself. You know your own  
23 feelings and your responses. And so my question is: Is that a  
24 fact that would prevent you or affect your ability -- affect  
25 your ability to be a fair and impartial juror?

1 THE JUROR: It wouldn't affect my ability.

2 MR. BRUCK: Yes.

3 THE JUROR: I feel that I can come in with the notion  
4 of not guilty, listen to all sides, and weigh it then.

5 MR. BRUCK: Okay. Now --

6 THE JUROR: Because of the strong feeling that I feel  
7 about this process, I feel that that outweighs a lot for me in  
8 most cases.

9 MR. BRUCK: I'm sorry. You feel that what outweighs a  
10 lot for you?

11 THE JUROR: The fact that I believe in this process so  
12 much that I'm not going to come in and not be able to look at  
13 both sides. I wouldn't be able to sit there if I had the  
14 notion of that: "I'm not even going to bother listening to  
15 that side." I will not do that. I...

16 MR. BRUCK: Right. Okay.

17 Now, that -- your answer, quite properly, concerned  
18 guilt or innocence, the process of deciding whether the person  
19 did or did not.

20 THE JUROR: Okay.

21 MR. BRUCK: I would like to move on from there.

22 THE JUROR: Okay.

23 MR. BRUCK: Let's assume, for purposes of my question,  
24 the jury found that he did it, and now the question is the  
25 death penalty. That's not either/or. That involves a lot of

1 considerations, right?

2 THE JUROR: Right. And I -- actually, ask the  
3 question that you want to ask me about that.

4 MR. BRUCK: Well --

5 THE JUROR: About what --

6 MR. BRUCK: I want to come back to whether or not your  
7 ability to fairly consider all factors weighing -- the factors  
8 weighing against the death penalty might be impaired by the  
9 fact that this involves the murder, among other people, of a  
10 child.

11 THE JUROR: Right. I see what you're saying. And  
12 like I said, there was certain cases where they did include  
13 children, but, you know, the situation of maybe one case, the  
14 evidence or what had happened with the criminal, say, were  
15 different in each of the cases that -- where I would form an  
16 opinion of death penalty or life.

17 So, like, I don't know all of the facts yet, so I  
18 would say that I can go into the next phase saying which side,  
19 whether it's mitigating or whatever the other one was saying,  
20 would prove that it should be death penalty or life. So  
21 without knowing even the full side on this side or any, really,  
22 of what's going on on this side, I -- without knowing that -- I  
23 would have to know those facts and all the information that  
24 would need to come, but I'm -- so what I'm saying is, no, I --  
25 I would have the ability to look at all of that.

1 THE COURT: I think we should try to wrap up, if we  
2 can.

3 MR. BRUCK: Yes. I think that's all.

4 THE COURT: All right.

5 MS. CONRAD: Excuse me, your Honor. May I ask  
6 something? It has to do with a question --

7 THE COURT: No, you can speak to Mr. Bruck.

8 MS. CONRAD: Well, can I speak with Mr. Bruck for a  
9 minute, then?

10 (Counsel confer off the record.)

11 MR. BRUCK: Just very briefly, when did your friend  
12 tell you about her very frightening experience at the marathon?

13 THE JUROR: Pretty much immediately right after  
14 because I -- it was like maybe the day after. Actually,  
15 because that was on April vacation, we're all -- all the  
16 teachers are off, and I was having people over my house on  
17 Tuesday for a lunch, and she had come over. So I knew the  
18 night before, actually, because, you know, I was making sure  
19 everybody was coming. So I knew basically immediately. And  
20 then she came over, and we all -- everybody that was there  
21 heard about it, and...

22 MR. BRUCK: And was that a pretty emotional  
23 discussion?

24 THE JUROR: Yeah. You know, we were like, "Oh, my  
25 gosh, I can't believe you were there" and, you know, that kind

1 of thing.

2 MR. BRUCK: Were there tears in her description?

3 MR. WEINREB: Objection. I don't think we need to be  
4 getting into that kind of --

5 THE COURT: Yeah, I don't think we need the details.  
6 I think that's enough.

7 Thank you.

8 MR. BRUCK: Thank you very much.

9 THE JUROR: You're welcome.

10 (The juror exits the courtroom.)

11 THE COURT: So we have six more. I think we should do  
12 two o'clock.

13 So I think we'll break. It looks like we have I think  
14 six more, so we should probably do two o'clock and  
15 get -- continue.

16 MR. BRUCK: Two o'clock?

17 MS. CLARKE: Six more or --

18 MR. WEINREB: Four more.

19 MS. CLARKE: Four more.

20 THE COURT: Oh, I didn't cull mine. I'm sorry. Let  
21 me just look.

22 MS. CLARKE: 429, -31, -34, and 37. Two are coming in  
23 tomorrow.

24 THE COURT: Right. Right. Okay. Sorry.

25 So do you want a little more time? Do you want to



1 make it 2:15?

2 MS. CLARKE: Sure.

3 MR. WEINREB: Actually, that would be appreciated.

4 (The Court exits the courtroom at 1:20 p.m.)

5 (There is a recess in the proceedings at 1:20 p.m.)

6 (The Court enters the courtroom at 2:33 p.m.)

7 THE CLERK: 429.

8 THE JURY CLERK: Juror 429.

9 (The juror enters the courtroom.)

10 THE CLERK: Sir, over here, please. Have a seat.

11 THE JUROR: Hi.

12 THE CLERK: Keep your voice up and speak into the mic.

13 THE COURT: Good afternoon.

14 THE JUROR: Hi, how are you?

15 THE COURT: Thank you for your patience.

16 Have you been able to follow my instruction to avoid  
17 talking about the case since you were here in January?

18 THE JUROR: Yes.

19 THE COURT: And also as much as possible to avoid  
20 media stories about the case?

21 THE JUROR: Yeah.

22 THE COURT: Okay. Thanks. So that's the  
23 questionnaire you filled out, and we're going to follow up on  
24 some of the questions and answers.

25 In terms of your employment, you're in the banking

1 business?

2 THE JUROR: Correct.

3 THE COURT: Have been for some time?

4 THE JUROR: Yes.

5 THE COURT: I gather that notwithstanding the  
6 anticipated schedule in the case, you're able to devote the  
7 time to spend on the case if you're asked to do that?

8 THE JUROR: Yeah, I would do that.

9 THE COURT: We asked jurors about whether they use  
10 social media of any sort, and you said you don't?

11 THE JUROR: I don't. Although it did occur to me  
12 afterwards that I actually have a LinkedIn account. But that's  
13 for professional; that's not social.

14 THE COURT: Okay. So I think the question I'd like to  
15 turn to is Question 77 on page 20. And in that question we  
16 asked jurors whether, based on things they'd seen or read in  
17 the media or otherwise, they had formed an opinion about whether  
18 the defendant was guilty or not or should receive the death  
19 penalty or not, and you answered each of the parts of that  
20 question by saying "unsure," and then you had an asterisk  
21 that -- and you wrote in "not sure what all the charges are."

22 THE JUROR: Correct.

23 THE COURT: I just want you to tell us a little bit  
24 more about why you answered the way you did.

25 THE JUROR: Sure. I know there are a number of

1 charges. I don't know exactly what those charges are. And in  
2 terms of guilty or not, the defendant hasn't had due process  
3 yet, and that's really the only way to determine guilt.

4 THE COURT: We asked jurors -- I guess you've not had  
5 formal jury service before?

6 THE JUROR: Correct.

7 THE COURT: But you're, I guess, familiar with the  
8 tenets of our judicial system?

9 THE JUROR: Yes.

10 THE COURT: And you understand that a defendant who is  
11 accused of a crime is presumed innocent unless the government  
12 proves that the person's guilty by the evidence produced at  
13 trial, and proves that beyond a reasonable doubt?

14 THE JUROR: Correct.

15 THE COURT: You're familiar with those principles?

16 THE JUROR: Yes.

17 THE COURT: Would you have any difficulty in  
18 faithfully applying those principles?

19 THE JUROR: No, I don't think so.

20 THE COURT: And if in a given charge, for example,  
21 given count of the indictment, if you thought the government's  
22 evidence was insufficient to convince you beyond a reasonable  
23 doubt that the defendant was guilty, would you be able to vote  
24 not guilty under those circumstances?

25 THE JUROR: Yes, that would be correct.

1           THE COURT: In your banking career, have you  
2 personally been involved as a participant in litigation? I'm  
3 sure you've seen litigation going on.

4           THE JUROR: I've seen litigation.

5           THE COURT: Have you testified or participated or  
6 anything like that?

7           THE JUROR: No, not that I can recall. It's been 30  
8 years of banking, so -- but not that I can recall. I mean, the  
9 only court proceeding I would have been involved in would have  
10 been speeding tickets.

11          THE COURT: Okay. 30 years ago?

12          THE JUROR: A long time ago.

13          THE COURT: Let me ask you to look at page 21. We  
14 asked about whether people were personally affected or involved  
15 in the events. And in 81 you said you closed branches for the  
16 day -- "the day" being the marathon day itself?

17          THE JUROR: Correct.

18          THE COURT: -- due to lack of or reduced police  
19 presence in communities served.

20               How long was the branch closed?

21          THE JUROR: I believe it was the day. During the  
22 shelter-in-place order.

23          THE COURT: The end of the week? Not Patriots' Day  
24 itself?

25          THE JUROR: I think it was Friday. During the

1 shelter-in-place order there were an inordinate number of  
2 police departments that helped the police in Boston, and as a  
3 result, there was a reduced police presence out in the suburbs.  
4 So we felt it was unsafe to have the branches open.

5 THE COURT: How many branches?

6 THE JUROR: I believe at the time we had six branches.

7 THE COURT: Okay. And in that next question we asked  
8 about participation of various support activities that followed  
9 the events, and you said that your employer purchased a table  
10 at a fund-raising dinner, I guess?

11 THE JUROR: That's correct.

12 THE COURT: To honor first responders?

13 THE JUROR: That's correct.

14 THE COURT: And you --

15 THE JUROR: I did attend the dinner.

16 THE COURT: -- did attend it?

17 Tell us about that in relation to the events. When  
18 was that, a few months after, a year after?

19 THE JUROR: A few months after.

20 THE COURT: Where was it?

21 THE JUROR: I don't recall which hotel, but it was at  
22 one of the hotels in Boston. We go to a number of events at a  
23 number of different venues, so unfortunately I can't tell you  
24 which one it was.

25 THE COURT: Is that the extent of your participation

1 in support of activities?

2 THE JUROR: Yeah.

3 THE COURT: Beginning on page 23 at Question 88 we  
4 asked a series of questions about attitudes towards the death  
5 penalty, both in general and perhaps as related to this case.  
6 Question 88 itself is the general question, if you have any  
7 views about the death penalty in general, what are they, and  
8 you said, "The death penalty has its place and requires special  
9 circumstances in" -- I guess it says "in states that use it."

10 THE JUROR: In certain states that use it, yes. I was  
11 born and raised in a state that is a death penalty state.

12 THE COURT: Which state is that?

13 THE JUROR: California. And as a result of that, when  
14 death penalties applied it didn't happen just because you  
15 committed a murder; it required special circumstances.

16 THE COURT: How long -- when were you last in  
17 California?

18 THE JUROR: When was I last in California?

19 THE COURT: I mean when did you live there?

20 THE JUROR: I lived there up until the end of 2000.

21 THE COURT: It just struck me that you're rather  
22 familiar with the death penalty laws --

23 THE JUROR: It was rather big in California. The  
24 Supreme Court actually went through the process of overturning  
25 death penalty cases repeatedly. And in California the justices

1 came up on the ballot, and actually three of them were voted  
2 out as a result of that.

3 THE COURT: So it was a public issue?

4 THE JUROR: It was a public issue. Yeah, it was  
5 actually quite well advertised in the media. And if I'm not  
6 mistaken, Charles Manson may have been a byproduct of that. I  
7 don't recall, but he may have been a death penalty case that  
8 was overturned and commuted to life.

9 THE COURT: In Question 89 we asked you to place  
10 yourself on a scale from 1 to 10, 1 being strongly opposed and  
11 believing that the death penalty should never be imposed, to 10  
12 strongly in favor and believing it should be imposed whenever a  
13 defendant is convicted of a willful murder, and you put  
14 yourself at 3. Can you explain that?

15 THE JUROR: Correct. I think it's an important  
16 decision. It has its place but it's not something that can  
17 randomly or willy-nilly be thrown around. It's an important  
18 decision.

19 THE COURT: On the next page we asked the question a  
20 little bit differently, this time not with numbers but words,  
21 and asked you to look at a number of different positions that  
22 someone might have and select one that might represent your  
23 feelings about the death penalty with respect to someone proved  
24 guilty of intentional murder. You selected C, which is that  
25 you are opposed to the death penalty "but could vote to impose

1 it if I believed that the facts and the law in the particular  
2 case called for it"?

3 THE JUROR: Correct.

4 THE COURT: Is that a fair summary of --

5 THE JUROR: That's a pretty fair statement, yes.

6 THE COURT: On page 25, at the bottom, Question 95, we  
7 put it in the context of this case, said if you found  
8 Mr. Tsarnaev guilty and decided that the death penalty was  
9 appropriate punishment for him, could you conscientiously vote  
10 for the death penalty, and you said "yes"?

11 THE JUROR: Yes.

12 THE COURT: And the other side of that question is 96,  
13 the next page. If you found Mr. Tsarnaev guilty and decided  
14 life imprisonment without the possibility of release was the  
15 appropriate punishment for him, could you conscientiously vote  
16 for that penalty?

17 THE JUROR: Absolutely. I think it's based on the  
18 merits of what's presented in court.

19 THE COURT: Okay. Any follow-up? Mr. Mellin?

20 MR. MELLIN: Thank you, your Honor.

21 Good afternoon, sir. I'm Steve Mellin. I'm one of  
22 the prosecutors in the case. I want to follow up on some of  
23 the death penalty answers you had where you talked about  
24 California and special circumstances.

25 Are there particular circumstances that you remember



1 or recall as being a basis for the death penalty?

2 THE JUROR: No. Yes, because I wasn't ever involved  
3 in a trial like that. I just remember it had got quite a bit  
4 of media play and it was due to the fact that the Supreme Court  
5 took it upon itself to start overturning death penalty cases  
6 repeatedly.

7 MR. MELLIN: Did you have a feeling about that or an  
8 opinion about that?

9 THE JUROR: I did. I actually felt that when the  
10 death penalty was warranted, that it shouldn't be overturned  
11 just because a justice decides that he or she doesn't like the  
12 death penalty.

13 MR. MELLIN: You heard a little bit this morning about  
14 how this process works. And I think, you know, you would find  
15 that the special circumstances you're referring to in  
16 California are somewhat like the aggravating factors you would  
17 be hearing about if you were a juror in this case.

18 Do you understand that?

19 THE JUROR: Yes.

20 MR. MELLIN: And assuming we -- you were a juror in a  
21 case and it got to the point where the jury was deciding  
22 between life imprisonment on the one hand and death penalty on  
23 the other, would you be able to -- if you believed the facts  
24 supported it, would you be able to actually vote to impose the  
25 death penalty on another human being?

1 THE JUROR: Yes, I would.

2 MR. MELLIN: Thank you.

3 Thank you, your Honor.

4 THE COURT: Mr. Bruck?

5 MR. BRUCK: Good afternoon.

6 THE JUROR: Hi.

7 MR. BRUCK: I'm David Bruck, and I'm one of  
8 Mr. Tsarnaev's attorneys. And I would like to follow up a  
9 little bit.

10 THE JUROR: Sure.

11 MR. BRUCK: I also would like to go back to California  
12 for a minute. I take it that if, you know, there was a ballot  
13 issue recently in California, you would not have voted to  
14 support getting rid of the death penalty in California if you  
15 were still living there. Is that correct?

16 THE JUROR: That's probably accurate because I believe  
17 it has a place. However, if it would have passed and no longer  
18 be the law there, I wouldn't support it. From my perspective,  
19 if that's what the law calls for, then that's what you do.

20 MR. BRUCK: You expressed your feeling about the  
21 record of the California Supreme Court. Of course we're in  
22 federal court now.

23 THE JUROR: Correct.

24 MR. BRUCK: The U.S. Supreme Court makes the rules.  
25 If you were on a jury in this case, would you have any

1     lingering suspicion that anything that was done here would just  
2     be reversed or that the courts wouldn't really carry through on  
3     the jury's verdict?

4             MR. MELLIN:  Objection.

5             THE JUROR:  No, I don't think so.

6             THE COURT:  No, we'll take the answer.

7             THE JUROR:  No, I don't think so.

8             MR. BRUCK:  You understand this is for real?

9             THE JUROR:  Yes, I do.  That's why I put in here that  
10     I think it's probably the most important decision a human being  
11     can make.

12            MS. CLARKE:  Now, I understand that -- I heard your  
13     answers that you haven't formed an opinion because you haven't  
14     heard the evidence, but, of course, people that lived in Boston  
15     heard a lot, and that's why I want to bring you back to before  
16     you knew you were going to be a juror.

17            THE JUROR:  Sure.

18            MR. BRUCK:  You weren't approaching this, of course,  
19     as a potential juror.  Did you have a sense of whether -- any  
20     sort of opinion at all about whether this young man was  
21     probably guilty or probably innocent?

22            THE JUROR:  Did I see videos of, say, the defendant  
23     and -- allegedly the defendant and his brother with the  
24     backpacks on walking under a store camera on a sidewalk?  Of  
25     course I saw that because it was in the media repeatedly.

1 MR. BRUCK: Sure.

2 THE JUROR: Did I see the video of the defendant in  
3 the boat the night after the shootout in Watertown? Of course,  
4 because it was all over the media. So, yeah.

5 Now, do I recall specifically what the defendant did  
6 in terms of -- for example, the judge this morning mentioned  
7 that -- the police officer that was shot at MIT. Do I know  
8 what occurred there? I don't know who did what there. Do I  
9 know who planted which backpack where? I have no idea.

10 MR. BRUCK: Got it.

11 THE JUROR: So I don't know those components.

12 And, again, I would look at it in the context of,  
13 well, I saw those particular video clips just as probably sort  
14 of anybody did. Again, it's about what gets presented in court  
15 as opposed to those components that you saw.

16 MR. BRUCK: Okay. I guess I want to ask something of  
17 a similar question but this time not about guilt or  
18 innocence --

19 THE JUROR: Sure.

20 MR. BRUCK: -- but about the death penalty.

21 Back before you were a juror --

22 THE JUROR: Sure.

23 MR. BRUCK: -- and believed the death penalty can be  
24 appropriate in some situations.

25 THE JUROR: Correct.

1 MR. BRUCK: Based on what you knew or had read or seen  
2 on TV, did you have an opinion about whether the death penalty  
3 was appropriate in this case?

4 THE JUROR: Believe it or not, at the time because  
5 Massachusetts is a no-death-penalty state, my assumption was  
6 that that applied in this particular case. At the time I  
7 wasn't aware that it was federal and it would be a death  
8 penalty case based on federal.

9 MR. BRUCK: And did you ever learn that it was a  
10 federal case and could be a death penalty case before you  
11 became a juror -- a potential juror?

12 THE JUROR: Possibly. I don't recall. I just  
13 remember at the time thinking that it was not due to the fact  
14 that we were in Massachusetts, and I just assumed that that  
15 prevailed.

16 MR. BRUCK: Okay. And understanding that, did you  
17 have any feelings about whether the death penalty would have  
18 been appropriate in this case?

19 THE JUROR: Again, I would probably have to -- I'd  
20 have to see what the evidence was to know if it was  
21 appropriate. I still don't know that today.

22 MR. BRUCK: Sure. Can you tell me how you -- where  
23 you were and how you first found out about the Boston Marathon  
24 bombing?

25 THE JUROR: You bet. I believe I was at the office

1 when it actually occurred.

2 MR. BRUCK: Which is where? I don't mean --

3 THE JUROR: My office is in Norwood, Massachusetts.

4 MR. BRUCK: In?

5 THE JUROR: Norwood.

6 MR. BRUCK: Okay.

7 THE JUROR: Yes. So I'm outside the 128 belt.

8 MR. BRUCK: Okay. And you found out how?

9 THE JUROR: I believe it was -- gosh, you know, I  
10 don't recall. It's just too long ago. Too much water has gone  
11 under that bridge.

12 MR. BRUCK: When you first heard the news, were there  
13 any particular people that you were concerned about that you  
14 knew might be there?

15 THE JUROR: No, I actually didn't know any of the  
16 runners.

17 MR. BRUCK: Or anyone you thought might be attending  
18 the marathon?

19 THE JUROR: No. I remember thinking it was tragic,  
20 obviously, and it was rather compelling in terms of, you know,  
21 people being injured, but it's been a long time since I've been  
22 a runner.

23 MR. BRUCK: Okay. And how about on the 19th? When  
24 did you -- can you tell me -- you said -- you told the judge  
25 you shut six branches of your bank?

1 THE JUROR: Correct. The shelter-in-place order came  
2 out. I believe I was attending a meeting right up on the belt  
3 at the -- what was it? The Newton Marriott, I believe it was.  
4 The shelter-in-place order went into place. We decided to  
5 leave the meeting, go back to the office.

6 On the way back to the office, we saw busload after  
7 busload of police heading in to Boston. It became very  
8 apparent that the police presence in the suburbs was  
9 diminished, and that's what led us to shut the branches down.

10 MR. BRUCK: After you shut the branches down, did you  
11 go home?

12 THE JUROR: Yeah, I think I went home probably  
13 midafternoon, like one o'clock, one-thirty in the afternoon.

14 MR. BRUCK: Okay. Can you bear with me just a moment?  
15 I think that's it, but I need to check.

16 THE JUROR: Sure.

17 (Counsel confer off the record.)

18 MR. BRUCK: Oh, yeah. Question 94, you were asked  
19 whether anyone close to you would be critical of you or  
20 disappointed in you if you voted for the death penalty in this  
21 case, if you voted for life imprisonment, and you stated it was  
22 possible. "The responsibility is mine, however."

23 Were you thinking of anyone in particular when you  
24 said it is possible?

25 THE JUROR: You know, I have friends that are natives

1 of Massachusetts that the death penalty is very foreign to  
2 them. I have friends that are very Catholic that the death  
3 penalty would be very foreign to them. So in that context,  
4 yes, it is possible that I could have either coworker,  
5 colleague, friend that would take a dim view of that.

6 MR. BRUCK: Okay. Of voting for the death penalty?

7 THE JUROR: Correct.

8 MR. BRUCK: Okay. Anybody you were thinking of that  
9 might go the other way, might be critical of you for not voting  
10 for it?

11 THE JUROR: You know, I think that the risk is in a  
12 situation like this, it's such a serious issue, that it  
13 potentially can become emotionally charged in one direction or  
14 another. So, yeah, it's possible. Just from my perspective,  
15 that would be my decision, not theirs.

16 MR. BRUCK: Okay. Thank you, sir.

17 THE JUROR: Sure.

18 THE COURT: All right, sir. Thank you very much.  
19 Just leave that there.

20 THE CLERK: Just leave the questionnaire there.

21 THE JUROR: Thanks.

22 (The juror exits the courtroom.)

23 THE CLERK: Juror No. 431.

24 THE JURY CLERK: Juror 431.

25 (The juror enters the courtroom.)



1           THE CLERK: Sir, come over here, please. Have a seat,  
2 if you would.

3           THE JUROR: Thank you.

4           THE CLERK: Just keep your voice up and speak into the  
5 mic so everyone can hear you.

6           THE COURT: Good afternoon.

7           THE JUROR: Good afternoon.

8           THE COURT: Since you were last here when you filled  
9 out the questionnaire, have you been able to avoid talking  
10 about the case, in substance, with anybody?

11          THE JUROR: Yes.

12          THE COURT: And avoid media reports about the case?

13          THE JUROR: Yes.

14          THE COURT: So that's the questionnaire you filled  
15 out. We're going to follow up on some of the things you wrote  
16 there.

17                I want to start on page 5 with Question 10, which we  
18 set out there what the schedule of the case might be and how  
19 long it might take and so on, and we asked whether -- if you  
20 were asked to be a juror in the case would it present any  
21 special hardship to you. And there are a couple of things in  
22 your answer that I want to explore with you.

23          THE JUROR: Okay.

24          THE COURT: You said you don't have a license to  
25 drive?

1           THE JUROR: No. It was suspended because I have back  
2 child support. So they suspended my license, and my bank  
3 account is levied right now.

4           THE COURT: When did those events happen?

5           THE JUROR: About -- I want to say two months ago?

6           THE COURT: Fairly recently?

7           THE JUROR: Yeah.

8           THE COURT: And how did you come up today?

9           THE JUROR: My mother, actually, took me, which is  
10 also a hardship because she's handicapped. She has Charcot's  
11 foot and neuropathy in her foot, and she walks with a cane. So  
12 she would be my only transportation. And even today she was in  
13 pain, today, driving up here.

14          THE COURT: Yeah, okay. Have you explored public  
15 transportation at all?

16          THE JUROR: I've explored it, but, again, I have no  
17 work, I have no job, I have no money to even --

18          THE COURT: You would be reimbursed for the travel  
19 expense by the court, but I didn't know whether you'd looked  
20 into the -- what you might call the logistics of getting  
21 transportation.

22          THE JUROR: Yeah. Like I said, I have no bus fare.

23          THE COURT: So you're living with your mother now?

24          THE JUROR: Yes.

25          THE COURT: And tell me what assistance you are to her

1 sort of on a daily basis.

2 THE JUROR: Well, she's also a diabetic and sometimes  
3 her sugar will go low. And I'm the only one that's living  
4 there with her. Well, me and my son. I have a child that was  
5 recently born in November. So I take care of her, whatever she  
6 needs. I go with her, say, for groceries. I help her with the  
7 bags while she goes upstairs. And that's really it.

8 THE COURT: You told us in the form that you are  
9 currently unemployed?

10 THE JUROR: Yes.

11 THE COURT: I'm looking now at page 10. It looks like  
12 the last time you worked was sometime last year, in 2014?

13 THE JUROR: Yes, Talbot's was my last job.

14 THE COURT: Do you remember what month you finished  
15 there?

16 THE JUROR: November 28th.

17 THE COURT: Are you currently actively looking for  
18 work?

19 THE JUROR: Yes, I am, like I said.

20 MR. MELLIN: Your Honor, I think the parties have an  
21 agreement.

22 THE COURT: Yeah, okay.

23 Okay. We're going to let you get on with your life.

24 THE JUROR: All right.

25 THE COURT: Thank you.

1 (The juror exits the courtroom.)

2 THE CLERK: Juror No. 434.

3 THE JURY CLERK: Juror 434.

4 (The juror enters the courtroom.)

5 THE CLERK: Ma'am, over here, please. Just have a  
6 seat, if you would.

7 THE JUROR: Hi.

8 THE CLERK: Do me a favor. Keep your voice up and  
9 speak into the mic so everyone around here can hear you, okay?

10 THE JUROR: Okay.

11 THE COURT: Hi.

12 THE JUROR: Hi.

13 THE COURT: Since you were last here, have you been  
14 able to avoid discussing the substance of the case with anyone?

15 THE JUROR: Yeah.

16 THE COURT: And also as much as possible avoid media  
17 reports of the case?

18 THE JUROR: Uh-huh. Yes.

19 THE COURT: So we're going to follow up on some of the  
20 things that you wrote in the questionnaire. And it's there for  
21 you to follow.

22 THE JUROR: For reference? Okay.

23 THE COURT: Let me start with page 5, Question 10.

24 Here we set out the schedule of the case and how long we  
25 thought it would take and so on, and asked if you thought it

1 would be a special burden or a hardship for you.

2 THE JUROR: Right.

3 THE COURT: And you wrote that you thought it would.  
4 Can you tell us a little bit more about that?

5 THE JUROR: Well, I'm the manager of my salon and I'm  
6 responsible for maintaining revenues. And it's constant daily  
7 managing of what's coming in and how do we augment the business  
8 that we have at hand. It's also managing schedules and  
9 internal disputes or client complaints, things like that. So  
10 I'm mostly -- I'm pretty much the sole person who's doing that  
11 at the moment.

12 THE COURT: This is a hair salon?

13 THE JUROR: Correct.

14 THE COURT: And about how many employees are there?

15 THE JUROR: I want to say 26 including myself.

16 THE COURT: Are they all full time, some full time,  
17 some part time?

18 THE JUROR: The majority are full time.

19 THE COURT: What's your weekly schedule like?

20 THE JUROR: I'm there Tuesday through Saturday, and it  
21 varies. I can be there at -- usually their earliest time would  
22 probably be 8 a.m. and the latest time would be, like, 8 p.m.

23 THE COURT: What are the hours the salon is open?

24 THE JUROR: The salon is open 9:15 -- it varies on the  
25 day.

1 THE COURT: Sure.

2 THE JUROR: So an early start could be -- we could be  
3 there at eight to start getting money out and getting  
4 everything done, to -- it depends on if people run behind.  
5 It's very difficult to say. I guess I would say like  
6 seven-thirty, eight the latest, if everything is going  
7 accordingly. But, again, the schedule varies. So start times  
8 are earlier, but it depends on who's opening and who's closing.

9 THE COURT: If you had to be here instead of there, in  
10 addition to the disruption of the work -- I understand that --  
11 would you also have any economic -- would it have an economic  
12 impact on you or would you continue to get paid, do you know?

13 THE JUROR: I would probably lose some income because  
14 I'd lose my clients.

15 THE COURT: So you actually have clients as well as  
16 management duties?

17 THE JUROR: Yes. Yes.

18 THE COURT: About how many a week, would you say,  
19 clients?

20 THE JUROR: How many clients do I do personally? I  
21 should know that answer. It depends. The salon does roughly  
22 400 people a week, so I'm doing a fraction of those. So I  
23 guess we could say --

24 THE COURT: Twenty?

25 THE JUROR: Probably more than that.

1 THE COURT: Okay. You told us later on in the -- as  
2 long as we're talking about the salon --

3 THE JUROR: Sure.

4 THE COURT: -- later on in the form that the business  
5 of the salon -- first of all, the salon is located on Boylston  
6 Street in Boston?

7 THE JUROR: Correct.

8 THE COURT: This is -- if you want to look, this  
9 is -- it's on page 21, I think. 20 and 21.

10 THE JUROR: Uh-huh.

11 THE COURT: And Questions 80 and 81, principally.

12 THE JUROR: Yup.

13 THE COURT: Tell us how the events affected the salon  
14 itself, because that's what you were writing about in --

15 THE JUROR: Yes. We were closed the day of the  
16 bombing, but the Tuesday we were also closed down because they  
17 weren't sure if that was also part of the crime scene. We did  
18 reopen. We had, at the beginning of Berkeley, starting all the  
19 way down Boylston Street, sort of where they had the grate up  
20 and people were leaving memorial things, flowers, toys, there  
21 was a large --

22 THE COURT: When you say at Berkeley, down Boylston  
23 Street --

24 THE JUROR: Yeah.

25 THE COURT: Away from the harbor, I guess is one way

1 of putting it. I don't know if that's west on Boylston Street.

2 THE JUROR: Sure, west. I think that would be  
3 correct.

4 THE COURT: I just want to get the directions correct.

5 THE JUROR: So we had a large military presence near  
6 us. There were the people in the white suits who were  
7 gathering evidence off the street; you had people in uniforms;  
8 you had vehicles, military vehicles all around us. It was a  
9 very intense scene.

10 THE COURT: How long did that last? How many days?

11 THE JUROR: It was a substantial time. It was however  
12 long they were rebuilding things. And they were looking for  
13 evidence for quite some time, I believe. So I don't want to  
14 say an exact number, but it was substantial.

15 THE COURT: So do you remember later that week, the  
16 Friday, there was a shelter in place?

17 THE JUROR: Yes.

18 THE COURT: Were you working then or --

19 THE JUROR: No, I had to -- so we reopened that  
20 Wednesday, Thursday. A lot of stuff felt very uncomfortable  
21 coming back, but we did reopen.

22 Friday was the shelter in place. Is that correct?

23 THE COURT: Yeah.

24 THE JUROR: So I did -- after receiving some text  
25 messages early that morning from people seeing the news and



1 then waking up and watching the news, we closed. I live in  
2 Cambridge, not too far from -- East Cambridge.

3 THE COURT: Were you home on that Friday?

4 THE JUROR: All day. And I had other people who lived  
5 in Watertown who were also -- everyone was locked in.

6 THE COURT: When you say "other people," you mean  
7 other people from the salon?

8 THE JUROR: Other coworkers. Other coworkers.

9 THE COURT: Yeah.

10 THE JUROR: Yeah, so we had like -- I was home. There  
11 was SWAT going down the street.

12 MR. BRUCK: We're satisfied, your Honor.

13 THE COURT: Okay. Thank you.

14 THE JUROR: Thank you.

15 THE CLERK: Just leave that there.

16 (The juror exits the courtroom.)

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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[REDACTED]

MR. WEINREB: I'm sorry, your Honor. One other thing. You asked us to alert you. On Question 85, this juror says he knows a witness.

THE COURT: Yeah, right.

MR. WEINREB: And that one will be a witness in the case.

THE COURT: Will be?

MR. WEINREB: Yes.

THE COURT: An active participant in the Watertown events?

MR. WEINREB: Yes. Is it Sergeant MacLellan? So he's one of the Watertown officers who participated in the shootout.

THE COURT: Let's go.

MS. CLARKE: I think he just got honored, too.

THE COURT: At the White House --

MR. WEINREB: Yes.

THE COURT: -- or wherever it was?

MS. CLARKE: At the White House.

THE COURT: Was that yesterday? I read --

1 MR. WEINREB: I believe it was.

2 THE COURT: -- it this morning, but this morning seems  
3 so far away.

4 (Laughter.)

5 THE CLERK: Juror No. 437.

6 THE JURY CLERK: Juror 437.

7 (The juror enters the courtroom.)

8 THE CLERK: Sir, over here, please. Have a seat.

9 THE COURT: Good afternoon.

10 THE JUROR: Good afternoon.

11 THE COURT: Thanks for being patient.

12 THE JUROR: No problem.

13 THE COURT: Since you were last here, have you been  
14 able to avoid discussing the substance of the case?

15 THE JUROR: Yes.

16 THE COURT: And also as much as possible to avoid  
17 media reports about the case?

18 THE JUROR: Uh-huh.

19 THE COURT: You have to answer "yes" or "no" for the  
20 reporter.

21 THE JUROR: Yes.

22 THE COURT: I understand, but her machine doesn't.

23 THE JUROR: No problem.

24 THE COURT: So that's the questionnaire you filled out  
25 when you were here. We're going to follow up on some of the

1 things you told us in answer to some of the questions, okay?

2 THE JUROR: Okay.

3 THE COURT: Let's start by having you tell us a little  
4 bit about your current employment. You're a  
5 construction -- senior project manager, I guess you say?

6 THE JUROR: Yes.

7 THE COURT: For a construction company?

8 THE JUROR: Yeah. We do hospital construction.

9 THE COURT: Hospital construction?

10 THE JUROR: Uh-huh.

11 THE COURT: Can you give us an idea of the size of the  
12 company?

13 THE JUROR: It's about a \$50 million company. They do  
14 hospital construction, retail construction. Cell phone towers  
15 is the other half of the company. But my involvement is  
16 strictly on healthcare.

17 THE COURT: Is it regional, national?

18 THE JUROR: Regional.

19 THE COURT: We ask people about social media use, and  
20 I guess you use LinkedIn for professional reasons?

21 THE JUROR: Uh-huh. For business.

22 THE COURT: Any social media, Facebook or anything  
23 like that?

24 THE JUROR: No. No, I had an account years ago, and I  
25 don't think I even open it anymore.

1 THE COURT: Let's do a sidebar briefly.

2 THE CLERK: Audio off.

3 MR. MacELHINEY: Audio off.

4 (Discussion at sidebar and out of the hearing of the  
5 public:)

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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2

THE COURT: Okay. All right. End of the sidebar.

3

THE CLERK: Back on.

4

(In open court:)

5

THE COURT: If you'd turn to page 20.

6

THE JUROR: Uh-huh.

7

THE COURT: And Question 77 near the top.

8

THE JUROR: Yes.

9

THE COURT: In that question we asked jurors whether they had seen or read anything in the news and as a result had an opinion about certain things in the case. There are four parts to it. Whether you had an opinion based on things you'd seen that the defendant was guilty or not guilty and whether he should receive the death penalty or not.

You said "yes" to the question whether you had an opinion that he was guilty, and as to the others you said "unsure."

18

THE JUROR: Uh-huh.

19

THE COURT: Okay? Then below that we asked if you answered "yes" to any of the questions, would you be able or unable to set aside your opinion and base your decision about guilt and punishment solely on the evidence that would be presented in court, and you checked the box "able."

24

THE JUROR: Uh-huh.

25

THE COURT: Can you tell us about that?

1           THE JUROR: Yeah, I'd be able to listen to things in  
2 court. Live in Watertown, so I was exposed to a lot of things  
3 that happened on those two days. I'm friends with a few of the  
4 police officers. The first officer at the scene, John  
5 MacLellan, coached my son in hockey, coached him in sports.  
6 Everything was shut down for the two days. My 13-year-old  
7 daughter had friends that had SWAT teams at their house in the  
8 neighborhood. So a lot of influence there, I feel.

9           THE COURT: Do you think all of that would affect your  
10 ability to be an impartial juror in this case?

11           THE JUROR: I said "able," you know, to be able to  
12 listen to it fairly, but I've heard so much of it, you know, so  
13 I really don't know.

14           THE COURT: Okay. I think you may be too close to the  
15 situation.

16           THE JUROR: Pretty close.

17           THE COURT: Thanks.

18           THE JUROR: Okay. Thank you.

19           (The juror exits the courtroom.)

20           THE COURT: All right. So 3:30 okay?

21           MR. WEINREB: That's fine.

22           MS. CLARKE: Yes.

23           (The Court exits the courtroom and there is a recess  
24 in the proceedings at 3:14 p.m.)

25           (The Court enters the courtroom at 3:37 p.m.)

1 (Discussion at sidebar and out of the hearing of the  
2 public:)

3 THE COURT: Okay. So I think the first person we saw  
4 was 418.

5 MR. WEINREB: Your Honor, the government moves to  
6 strike 418.

7 MR. BRUCK: No argument.

8 THE COURT: No argument? Is that what you said?

9 MR. BRUCK: Is this correct?

10 Yes, that's correct. No argument. Yes, we have no  
11 bananas.

12 MS. CLARKE: You can always deny the motion.

13 (Laughter.)

14 THE COURT: Okay. I always forget who we --

15 MR. WEINREB: 406 is next.

16 MS. CLARKE: 413 is the same motion.

17 MR. WEINREB: Do we want to go in order? Why don't we  
18 go in order?

19 THE COURT: Yeah, 406 is next.

20 MR. WEINREB: 406 was excused.

21 THE COURT: Yeah.

22 MR. WEINREB: 413 the government moves to strike.

23 MR. BRUCK: There's no argument on that juror.

24

25 MR. WEINREB: Was disqualified.



1 THE COURT: 421 was one we skipped by agreement, as  
2 was 414 and 404 and 428, just for the record.

3 MR. WEINREB: Right.

4 THE COURT: So that brings us to 423.

5 MR. WEINREB: That's a government motion.

6 MR. BRUCK: No argument on that.

7 THE COURT: Okay.

8 425?

9 MR. BRUCK: Oh, no motion.

10 MR. WEINREB: No motion.

11 THE COURT: Okay. 425 is okay, then.

12 427?

13 MR. BRUCK: The defense has a motion on this juror.  
14 This is based on the cumulative amount of indications of  
15 potential bias. I want to begin by saying this is a juror who  
16 was eager to serve and wanted to be a good juror and was with  
17 the program as far as what one needs to do or needs to feel,  
18 and I think she seems sincere in wanting to be a good juror,  
19 but there's just too much.

20 To begin with, she formed an opinion of guilt, which  
21 she candidly acknowledged both in her form and in her  
22 questioning, from the TV. When she spoke in her own words, she  
23 was clearly someone who had to be convinced otherwise by the  
24 defense. She said, "I'm not saying you can't tell me anything  
25 that will change my mind. I respect the process enough to

1 listen to all sides, but there still is that back-of-my-mind  
2 sort of feeling that he is guilty." That's the juror, you  
3 know, unprompted.

4 She said that -- of course she has a good friend who  
5 was at the bombing who went through what sounds like a very  
6 nightmarish experience with her ten-year-old son. This juror  
7 found out about it that very night, or that day, very quickly,  
8 and then the next day they were all together and she got the  
9 whole story. She described the experience as devastating for  
10 her and for her son. She described her, as I said, a very good  
11 friend.

12 Now, this juror -- the jury is going to learn all  
13 about Martin Richard, an eight-year-old boy, two years  
14 different than this little boy, complete with quite dreadful  
15 autopsy photos. We just have to be realistic about how this  
16 juror is going to be thinking about her friend and her friend's  
17 child.

18 And she was somewhat candid about that. She said, "I  
19 would say yes, there are some emotional feelings" -- this was  
20 in response to will this affect the way you sit in this case;  
21 would it affect your judgment? "I want to be honest" -- this,  
22 again, is how the juror is talking when she's not being, you  
23 know, encouraged to give any particular answer -- "I mean, I  
24 guess as the trial goes on the emotion could come up in such a  
25 way that maybe it could," that is, affect her judgment. "Maybe

1 the emotion behind it would be hard to get around." That's  
2 another direct quote from this juror.

3 So there's all of that. And that's pretty intense,  
4 and it goes to the kind of crime that she gave as an example,  
5 unbidden, of a death penalty case, that is a crime against a  
6 child, she was talking about sex abuse and so on. That's where  
7 she goes when she's thinking about a capital case. And this is  
8 very personal and very intense, and I think you could see that.

9 Then she had friends at work, colleagues say, "Fry  
10 him." That is when they knew she got her jury summons; this  
11 isn't back at the time or the year and a half since then. So  
12 there is that setting.

13 There is the in-law, the police officer witness. The  
14 government says, Well, we're not going to call him, which is  
15 the more jurors we talk to, the shorter the witness list is  
16 going to be. I hope there's someone left. But this witness --

17 THE COURT: That's part of my objective.

18 MR. MELLIN: You're succeeding, your Honor.

19 (Laughter.)

20 MR. BRUCK: It's succeeding beyond your wildest  
21 imagination.

22 Be that as it may, the question here isn't what she  
23 thinks about the witness, but she's already heard his  
24 testimony. She told us the succinctly breathless description  
25 secondhand from this witness, how he was driving around and it

1 was scary. So it's a little late. And granted, we don't know  
2 exactly what she's heard or exactly what effect it had, but  
3 it's -- you know, it's a witness to the case, if not a witness  
4 who will be called for her to -- in a way, it almost might be  
5 better if he is called because at least then she will hear the  
6 real testimony rather than the secondhand version.

7 And then there's something which is a little odd. I  
8 mean, it's not odd, but it's only come up with this one juror,  
9 and that is that she volunteered -- she gave an example of a  
10 case where she would impose the death penalty and a case where  
11 she wouldn't. The case in which she wouldn't was a little  
12 disturbing because it was the Andrea Yates case, which was a  
13 woman who was profoundly mentally ill and in the end was  
14 acquitted by reason of insanity after being retried. And  
15 that's someone she saw as a candidate for life imprisonment.  
16 Her candidate for the death penalty was Susan Smith, who I  
17 think, as the Court is aware, was represented by Ms. Clarke and  
18 by me.

19 THE COURT: I wasn't aware of it, but I'm not  
20 surprised, given your evidence.

21 MR. BRUCK: The difficulty is that this case -- she  
22 said "Court TV." I think she's probably talking about a  
23 Justice File documentary, an hour-long documentary which has  
24 been replaying for the last 15 years about that case. It's on  
25 all the time. And anyone who watches it or, you know, anyone

1 who remembers the details, like who the lawyers are, will know  
2 that it was me and Ms. Clarke.

3 MS. CLARKE: We looked younger.

4 MR. BRUCK: As a matter of fact, we were younger. But  
5 be it all as it may, if that was the only problem with this  
6 juror, then it would be something to worry about. We don't  
7 think it would be disqualifying all by itself, but it is  
8 something to worry about.

9 The other thing, and there's no reason to get into the  
10 weeds of that case, but she parroted the media story of the  
11 Susan Smith case and why Susan Smith murdered her children,  
12 which absolutely fell apart at trial, was not proven, were not  
13 the real facts. But 20 years later, as a juror who said she  
14 would not form an opinion in this case based on the media, is  
15 still reciting the erroneous media version of the Susan Smith  
16 case. Now, that's not to malign her in any way. It's simply  
17 to reflect on the realities of the effect of media coverage.  
18 And we're a lot closer to the Boston Marathon bombing and this  
19 witness's exposure to the Boston Marathon bombing than to the  
20 Susan Smith case.

21 Mr. Weinreb said yesterday we have 1350 jurors, why on  
22 earth would we take a chance on this one? There's no need to  
23 do it. We just think there's too much there.

24 THE COURT: Okay.

25 MR. WEINREB: So, your Honor, the government opposes

1 the motion. I do agree with Mr. Bruck if you just were to look  
2 at the record of various things that he elicited from her  
3 during his examination of her, and elsewhere from the  
4 questionnaire and so on, she might be the victim of a death  
5 from a thousand cuts, but I think that completely ignores who  
6 she appeared to be as a person when she was sitting in that  
7 chair.

8 I think she came across as one of the most candid,  
9 thoughtful jurors we have seen, someone who seemed to have a  
10 lot of insight, someone who unhesitatingly talked about her  
11 inner process, talked about it articulately, insightfully. And  
12 I think that that's one of the reasons why there's so much  
13 fodder for Mr. Bruck to draw upon on trying to excuse her.

14 I think that, you know, there are some jurors who  
15 state with absolute confidence, "I could do this, I could do  
16 that, emotion would not affect me," and so on, and I'm sure  
17 when they say that, they're sincere and believe it, but I think  
18 there are other jurors who are more, let's say, emotionally  
19 attuned to their own inner process and maybe to human nature in  
20 general, who acknowledge that emotional -- that cases like this  
21 one, like all capital cases, are likely to be emotional and  
22 that those emotions might affect them.

23 And to acknowledge -- to only favor jurors who state  
24 categorically that it would not affect them and exclude those  
25 who have the insight and candor to say it might affect them

1 would be to disqualify from jury service many people who are  
2 very qualified to serve.

3 With respect to just a few of the things that were  
4 just raised, when -- in answer to Question 77, Mr. Bruck had  
5 said when she was giving her candid answers, by which I assume  
6 he meant answers when the Court was asking the questions rather  
7 than when I was asking the questions --

8 MR. BRUCK: That would be correct.

9 (Laughter.)

10 MR. WEINREB: -- she -- one of the things I wrote down  
11 that she said is that, "We don't know everything." The Court  
12 asked, "Would you be able to set aside what you heard outside  
13 the courtroom?" She said, "I feel I could do that. I respect  
14 the process. I would be able to." I think she also expressed  
15 some concern about her ability to. And again, to me that's a  
16 mark of a very thoughtful juror who is not simply saying the  
17 thing that she knows is the right answer because she's an  
18 intelligent person, but she's saying something that would be  
19 true of virtually every juror who is qualified to serve on a  
20 jury.

21 With respect to her friend who was at the Boston  
22 Marathon, she said that she heard that story two years ago,  
23 practically. It was emotional at the time. But the way that  
24 she described it, she didn't seem to be emotional about it. It  
25 was emotional for the friend and for the friend's child. And

1 of course she, being an empathic person made an empathic  
2 response at the time and repeated it today, but there was no  
3 evidence looking at her that she felt emotional about it or  
4 that it affected her, and she was quite confident that it would  
5 not affect her.

6 With respect to the examples that she gave of cases in  
7 which she thought the death penalty might be appropriate or  
8 would not be appropriate, I don't think that any insidious  
9 inferences can be drawn from that. I'm obviously no expert on  
10 the Susan Smith trial the way the two attorneys who tried it  
11 are, but my recollection of that case is that the theory that  
12 she spoke of as being the reason why Susan Smith committed that  
13 murder was the government's theory in that case.

14 MS. CLARKE: It was the media's theory.

15 MR. WEINREB: When I say I don't have the same  
16 familiarity as you, I would say I read every word of the  
17 transcript in preparation for this case.

18 MR. BRUCK: It was the government's theory at the  
19 beginning of the trial.

20 MR. WEINREB: It seemed to me in reading the opening  
21 and closing statements that that was the government's argument.  
22 And I believe that there is, you know, plenty of belief -- no  
23 one can know why jurors decide what they do, but I believe  
24 there is plenty of belief that people may have believed that  
25 theory but also believed that any woman who kills her own



1 daughters [sic] must have some sort of mental -- mitigating  
2 mental issue.

3 So, again, I only say that because I don't want the  
4 record to stand with those as being facts on the record. But I  
5 think the bottom line about this juror is that she is exactly  
6 the kind of person one would want on a jury. Mr. Bruck said  
7 given 1350 people to choose from, why her? Because you are  
8 looking for people who have all the qualities that this juror  
9 has, that's why.

10 THE COURT: I'm going to allow the strike in this case  
11 for a combination of reasons. I do think she would be a fine  
12 juror in very many cases. I do not think that -- and I  
13 appreciate her earnestness here. I am concerned about her  
14 personal connection with people who were affected.

15 I take note that she's a teacher of special ed kids,  
16 and I think that would surface at some point in the course of  
17 the case within her somehow perhaps. Her own kids are a little  
18 older than this now, but I just think she's -- I agree. She's  
19 probably an empathic person, and I just think this is probably  
20 not a good fit for this case.

21 That brings us to 429.

22 MR. BRUCK: The defense has a motion on this juror on  
23 two grounds: One is, of course, he was a bank manager who  
24 found it necessary to close all six branches of which he has  
25 authority on the day of the shelter in place as well as staying

1 at home all of that day, and also that his bank organized a  
2 dinner that he attended for first responders, I'm assume many  
3 of whom will be witnesses in this case.

4           You know, this is the sort of connection that if it  
5 were not this case and a juror came forward with these two  
6 connections, I don't think anyone would think twice about  
7 thinking he was too connected to the offense to serve as a  
8 juror, and the only reason why he would be seriously considered  
9 is there's so many other people with greater connections. But  
10 the facts are what they are, and we think that his life has  
11 been too impacted professionally and he's been too exposed by  
12 people who are likely to be -- and he's already taken part in  
13 honoring people who are likely to be prosecution witnesses,  
14 although he couldn't have been expected to know their names.

15           So for those two reasons, we think he should be  
16 disqualified.

17           MR. WEINREB: Your Honor, the government opposes the  
18 motion.

19           With respect to the attending of the fund-raiser, he  
20 couldn't remember where it was, who it was, what it was. It  
21 was obviously an extremely minor, insignificant event in his  
22 life, certainly not one that he remembers two years later, so  
23 he might not have been paying too much attention. Who was  
24 there seems to have not made an impression on him.

25           As for closing the bank branches, it wasn't that he

1 was personally affected in any way; he said he simply closed  
2 them because the number of officers who were drawn off to some  
3 other part of the city to do some other thing made him believe  
4 that there might be insufficient police presence to guard the  
5 banks where he was. Again, not the kind of -- not evidence at  
6 all of a personal connection to the event; simply, you know, an  
7 event out of the ordinary for that day, but nothing that seemed  
8 to have any particular impact on him.

9 Frankly, you know, it was quite scrupulous of him to  
10 mention it on his questionnaire. I think a lot of jurors  
11 wouldn't have even thought it was worth mentioning. That's  
12 all.

13 THE COURT: Okay. No, I think he's fine. I don't  
14 think his answers to Questions 81 and 82 indicate an inability  
15 to perform the obligations of jury service in this case.  
16 Otherwise, he seemed to be, you know, very obviously  
17 intelligent and aware of the serious responsibility. He said  
18 that a couple of times in his form and here, so I think he's  
19 fine.

20 431 we excused, 434 and 437.

21 So I think for today it's 425 and 429 that are in the  
22 pool.

23 Other business. We have, I think you have --

24 Did you hand this out yet?

25 LAW CLERK: Not yet.

1           THE COURT: So I've gone through -- so we have the  
2 remainder of Panel A, which I think after having some  
3 reductions -- first of all, we have a couple -- we have two or  
4 three people from today because of car problems and so on --  
5 who are coming in tomorrow. Then we have the remainder of  
6 Panel A, which is a little bit short of the 20 when you put  
7 those two things together. I forget what the count is,  
8 17 -- 16, 17.

9           MS. CLARKE: Panel B.

10          MR. WEINREB: That would be these.

11          THE COURT: Panel B. I'm sorry.

12          Now looking forward to Panel C.

13          MR. WEINREB: Right.

14          THE COURT: So this picks up at the end of whatever  
15 range we have already had for -- through Panel B. And so I  
16 went through the beginning, I don't know, roughly 100 maybe,  
17 and these would be my suggestions. I think most of them are  
18 pretty clear, a good number of hardships, various other things,  
19 students, one semester, things like that. So I would like you  
20 to look at them and see if there's any issue with that. Again,  
21 I would like to squeeze the guaranteed excuses out of the pool  
22 so we could have real candidates when we begin next week.

23               I think we would probably -- at the very beginning may  
24 want to fill in -- I'm not sure of the number, whether it's  
25 three or five -- to get up to a rough 20 for tomorrow,

1 including the postponements we made. It would only take a few.  
2 So if you could at least look at the first array of ten or so,  
3 and see if you can do that so we can pick -- so that's that.

4 MR. WEINREB: I'm sorry, your Honor. So a little  
5 earlier the parties gave Mr. McAlear a list of excused -- of  
6 agreed strikes for Panel C.

7 THE COURT: I haven't seen that yet. So we'll compare  
8 those lists. There may be some --

9 MR. WEINREB: There may be an overlap.

10 THE COURT: I'll look at that as well.

11 So to the extent -- if my numbers and your numbers  
12 match, we'll take them out. If there are differences, we can  
13 talk about it, or just leave them in, whichever. That's one  
14 thing.

15 One of the jurors who didn't come today and was -- is  
16 currently scheduled to come tomorrow, I just wanted to raise  
17 it. 432. She is a -- she works at the Massachusetts Parole  
18 Board as an institutional parole officer, and she works in the  
19 Victims' Unit of the parole board.

20 MS. CLARKE: Right.

21 MR. BRUCK: Right.

22 THE COURT: It struck me that if she might be somebody  
23 you agreed on, we won't have to have her come in tomorrow.

24 MS. CLARKE: We'll agree with that.

25 MR. WEINREB: We'll take a quick look at her, but it

1 sounds like somebody we could agree to.

2 THE COURT: Jim could call her tonight, then, and tell  
3 her she doesn't have to come in, if that's the case.

4 I guess that's it for today.

5 MR. McALEAR: I do have one. Juror 401. She was our  
6 juror that was on a trip. She was planning on coming in  
7 tonight. She's getting word that her plane may be delayed.

8 THE COURT: Monday.

9 MR. McALEAR: Tuesday, unless we're coming in Monday.  
10 I haven't been told yet.

11 MS. CLARKE: So we'll put her off till Tuesday?

12 THE COURT: Okay. So that's it.

13 MR. McALEAR: That's the only one I got.

14 MS. CLARKE: So maybe 432 not at all?

15 MR. WEINREB: Right.

16 THE COURT: So as I presume you all know, the Court of  
17 Appeals has scheduled an oral argument next Thursday morning.  
18 We may well still be in this process, although I think in the  
19 very last stages of it. I didn't know whether -- what the  
20 sentiment of the attorneys might be about whether we would sit  
21 on Thursday morning or not, or whether you want it to be in the  
22 Court of Appeals. I don't know who's arguing, I guess is my  
23 point. For instance, I saw Ms. Meissner's name on the notice,  
24 and she does a lot of appellate argument. And if you don't  
25 know it now, I don't need to know now, but we have time to

1 plan.

2 MR. WEINREB: I think we would be inclined to suspend  
3 it for the morning.

4 THE COURT: I think it's ten o'clock or something like  
5 that, and it's 20 minutes per side, so it's over by eleven  
6 o'clock anyway.

7 MR. WEINREB: Right.

8 THE COURT: We often get a late start. We could start  
9 at 11:30 or something like that.

10 MR. WEINREB: That would be fine.

11 MR. McALEAR: The only thing I would like to raise is  
12 we tried to have for another matter regarding our folder  
13 inserter machine -- and our folder inserter gentleman showed up  
14 at eleven o'clock, and there's no parking anywhere.

15 THE COURT: When you get here in the late morning?

16 MR. McALEAR: The Vertex building has been full.

17 THE COURT: Couldn't we have the jurors come in early  
18 and just serve them milk and cookies?

19 (Laughter.)

20 MR. WEINREB: By the time they get settled, see the  
21 video and so on...

22 MR. McALEAR: That's fine.

23 THE COURT: When I was saying 11:30, I was thinking  
24 they would actually --

25 MR. McALEAR: I'll have the jurors here.

1 THE COURT: -- maybe be here, but 11:30.

2 Okay?

3 COUNSEL IN UNISON: Thank you.

4 THE COURT: That's everything.

5 MS. CLARKE: Jim is going to tell us the list.

6 (The Court exits the courtroom and the proceedings  
7 adjourned at 4:02 p.m.)

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## C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSE, RMR, CRR  
Official Court Reporter

Date: 2/12/15